

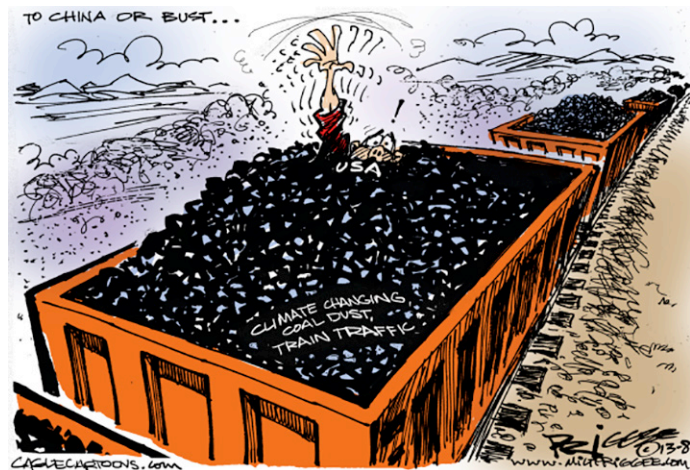


GrassRoots Institute

Progressive Solutions for the Common Good

WILL MENDOCINO RAILWAY (MR) BRING HAZARDOUS FREIGHT TO FORT BRAGG?

MR has acquired the former Georgia-Pacific (GP) mill site in Fort Bragg and now owns 20% of the city.¹ MR has released plans to develop hotels, housing and retail space on the site north of Alder Street, with a train track flanking the coastal trail from Laurel Street to Glass Beach.² MR affiliate Sierra Energy (SE) has registered 21 domain names mentioning Fort Bragg's famous Glass Beach, including glassbeachbrewery.com, glassbeachdiner.com, glassbeachhotel.com and glassbeachrestaurant.com,³ suggesting an interest in developing such establishments or selling the domain names to a developer. MR has stated that on the remainder of the property it might like to build a gasification plant⁴ and a rail-to-barge transload facility to ship gravel by sea.⁵



Rumors about a Fort Bragg coal port – what's the story?

Following recent failed efforts by coal interests to establish a rail-to-ship coal export terminal to ship coal to Asia via Humboldt Bay,⁶ it has been rumored that MR could build a coal export facility in Fort Bragg. MR has denied that it would do so – in December 2021, MR's Robert Pinoli told the Anderson Valley Advertiser, "We are not associated with coal ... We're not touching it."⁷ So why does the rumor persist?

The backstory: The Skunk Train has been severed from the interstate rail network since 1998, when the north-south track through Willits was shut down for safety reasons.⁸ The portion of that line south of



Santa Rosa is currently operated by Sonoma-Marín Area Rail Transit (SMART), which plans to eventually restore tracks and service as far north as Cloverdale.⁹ The track from Cloverdale to Humboldt Bay remains closed, and the State of California is in the process of obtaining approval from the federal Surface Transportation Board (STB), which regulates railroads, to rail-bank those tracks and build the Great Redwood Trail (GRT) on their rail bed.¹⁰ The GRT has been championed by a

coalition of conservation groups, recreation groups and city and county agencies.¹¹ Railbanking preserves railroad rights-of-way for possible future use. In the currently active STB proceeding AB-1305X, California seeks approval to railbank the tracks north of Willits.

In May 2020, MR informed SMART that it would like to acquire the freight rights to the out-of-commission tracks between Willits and Cloverdale. These rights could connect the Skunk Train to the interstate rail network. This connection could help the Skunk make a freight business viable, and help secure the Skunk's status as a common carrier railroad.¹²

A common carrier railroad is a railroad that transports people or freight from one place to another (in contrast to a round-trip tourist excursion such as the Skunk currently provides) and – unlike a private contract carrier – provides this service to anyone willing to pay its fee.¹³ Common carrier railroads that connect to the interstate rail network are “federally preempted,” which means that state and local regulatory agencies cannot interfere with their railroad operations that occur on the interstate network.¹⁴ Common carrier railroads are also a form of public utility, legally entitled to use eminent domain for railroad purposes.¹⁵ MR warned SMART it would oppose any actions that threatened its potential access to the Cloverdale line. (Such actions could include railbanking the line to build the GRT).



In May 2021, MR hired Wyoming-based Wasatch Railroad Repair Contractors to refurbish 50 freight cars.¹⁶ But the Fort Bragg-Willits line has been split in two since 2015 by a collapsed tunnel,¹⁷ and so far as we know MR has not taken further steps to gain the tracks to Cloverdale. Why did it invest in 50 freight cars?

In an August 16, 2021 STB filing in railbanking proceeding AB-1305X, MR stated that it was interested in operating the rail line extending 40 miles north from Willits, in part to transport Wylatti gravel from Dos Rios; it was considering bidding either on its own or “jointly with an investment group that recently approached MR.”¹⁸ The filing did not identify the potential investors, but on the very same day, a similar filing was made in the same proceeding by the Wyoming-based North Coast Railroad Company LLC (NCRCo), which claimed to have \$1.2 billion in financing to restore the rail line from Willits to Humboldt Bay for “high-volume shipments.”¹⁹ It was soon reported that Congressman Jared Huffman had learned that NCRCo was tied to “coal companies in league with the Crow Tribe in Montana.”²⁰ The tribe’s reservation was “home to billions of tons of coal deposits in the Powder River Basin [and] the tribe has signed numerous agreements with coal mining companies from Wyoming, Utah and Montana.” Coal interests had been exploring a plan to export coal to Asian markets via the Port of Humboldt Bay. It should be noted that neither MR’s nor NCRCo’s proposal would have secured the connection to the interstate rail network that a coal train would need. That connection would require restoration of the tracks between Willits and Cloverdale, as MR had proposed in 2020.

In a May 2022 filing with the STB, MR scaled back its ambition, stating it wanted to acquire the track only 13 miles north from Willits (approximately to Wylatti’s Grist Creek Aggregates gravel facility).²¹ In June 2022, the STB rejected NCRCo’s bid to acquire the Willits-to-Humboldt Bay rail line and ended plans for a Humboldt Bay coal export terminal after NCRCo was late on a deadline and provided a bank statement that appeared fraudulent.²² MR’s expected bid for the tracks – called an “offer of financial assistance” – is due in mid-October, and is the last major obstacle to the GRT securing the right-of-way for the tracks north of Willits.



In the last decade, coal interests have tried and (so far) failed to establish several other West Coast coal export terminals.²³ Communities have opposed these facilities due to climate, environmental, public-health and safety concerns – coal trains billow dust containing lead, mercury and arsenic, in addition to diesel emissions.²⁴ Coal dust has been known to build up on tracks and cause trains to derail.

On June 3, 2022, two days after NCRCo's late and final filing in AB-1305X, MR announced its support for State Senate Bill 307, authored by Senator Mike McGuire, which sought to prohibit state funding for rail services on the track north of Willits and specified that no state funding could be spent on a coal terminal in Humboldt County.²⁵ An MR press release stated that the company's support for the bill should "put to rest unsupported media reports that Mendocino Railway is working in collusion with the 'Mystery Coal Train.'" MR's press release did not discuss the fate of the tracks south of Willits, which could connect Fort Bragg to the interstate rail network.

Even if MR does not want to carry coal, it may have no choice. A common carrier railroad, such as MR aspires to be, must provide service to anyone willing to pay its fee, even when freight is hazardous or otherwise undesirable, such as coal or oil.²⁶ If MR connects to the interstate rail network and builds a rail-to-barge gravel transload facility on the mill site, could coal interests use this infrastructure to export coal? Because of the federal preemptions enjoyed by common carrier railroads, state and local authorities could face difficulty regulating such an operation. Would the marine terminal itself be federally preempted?

As of February 2022, the State of Utah had set aside \$53 million to help fund a proposed Oakland coal terminal that is tied up in litigation and may be defeated; where would the money go then?²⁷ What would it cost to establish a coal terminal in Fort Bragg's Soldiers Harbor? The cost of rehabilitating tracks between Windsor (the northern edge of SMART's current track restoration efforts) and Willits – \$600 million – would be far cheaper for coal interests than rehabilitating tracks all the way to Humboldt Bay (\$2.3 billion+), potentially leaving hundreds of millions of dollars available to develop a Fort Bragg seaport.²⁸ The Oakland coal terminal has been estimated at \$250 million²⁹ and a proposed coal terminal in Washington State was estimated at \$500 million.³⁰

MR has been denied three federal grants since 2018 to repair its collapsed tunnel, and its pending application for a \$31.3 million Railroad Rehabilitation & Improvement Financing (RRIF) loan may soon be denied as well³¹ (tunnel repair will likely be considered an operating expense, ineligible for RRIF assistance³²). Coal funds could turn out to be the only way MR can raise the money it needs to accomplish its stated goals as a railroad.

Another concern about hazardous freight: U.S. (and Canadian) railroads do not and cannot carry insurance adequate to cover catastrophic accidents. Take for example the 2013 oil-train accident in Lac-Megantic, a small town in Quebec. The train derailed and caused an explosion and fire that killed more than 40 people and destroyed more than 30 buildings, at a cost of hundreds of millions of dollars. The railway was insured for only \$25 million.³³ It limited its exposure to the rest of the damages by filing for bankruptcy protection.



Gravel by sea – really?

In its August 2021 STB filing, MR stated it wanted to transport gravel by train from Wylatti's Dos Rios quarry to Fort Bragg, where the gravel could be



“shipped via barge to various destinations.”³⁴ Barges are not used on the open ocean – even customized ocean-going barges cannot be used with waves larger than 20 feet.³⁵ But barges can be used to haul gravel to larger bulk carriers anchored offshore. This would require a dock for the barges and a conveyor system to transfer gravel or other commodities from railcars or trucks to the barges.³⁶ Could this kind of facility be installed at Soldiers Harbor, where lumber used to be shipped?

It would be a major investment for MR to develop a gravel transload operation such as this, but the cost benefit of shipping gravel by sea is significant. A November 2017 Los Angeles Times article reporting on the shipping of gravel and sand for concrete said the cost of shipping was 35 cents per ton per mile by truck, but half a cent per ton per mile by oceangoing bulk carrier.³⁷ This price difference had led Los Angeles builders to buy gravel from Canada rather than from local quarries.

If MR plans to store gravel on the mill site, the public health impact should be considered. This is currently an issue in West Oakland: In August 2022, the California Attorney General joined a lawsuit filed by West Oakland activists to prevent construction of an open-air gravel and sand facility at the Port of Oakland, Oaklandside reported.³⁸ The plaintiffs fear that dust from rock and sand piles at the facility could blow into West Oakland neighborhoods, worsening air quality and already high rates of asthma and other illnesses linked to the nearby port. In Fort Bragg, if water is used to control gravel dust (or coal dust), how much water will that take from the city’s limited supply?



Aside from the issue of dust, diesel emissions from locomotives have been found to increase the risk of cancer in neighboring communities.³⁹ An active rail-to-barge transload facility, with diesel locomotives and diesel ships, would clearly bring more diesel emissions to Fort Bragg. The freight traffic would also clearly bottleneck vehicle traffic on Highway 1 through downtown Fort Bragg.

Is a trash gasification plant possible? Would it pose environmental risks?

In December 2021, MR’s Robert Pinoli said a gasification plant might be built on the mill site using FastOx,⁴⁰ a technology that MR affiliate Sierra Energy (SE) has been attempting to develop to commercial viability. Pinoli claimed the plant could relieve pressure on local landfills by using garbage as a feedstock to produce syngas, which can be converted into end products including electricity, diesel, hydrogen, ammonia and Fischer-Tropsch liquid fuel.⁴¹

MR’s Fall 2021 “Little Stinker” newsletter says SRC “provides ... renewable zero-emission energy and fuels through Sierra Energy.”⁴² SE CEO Mike Hart told Inc., for a May 2022 article, that SE “plans to issue its first commercial [gasification] licenses this year.”⁴³ In fact, no information has been found to confirm that SE has managed to make gasification of trash – or any other feedstock – commercially viable. Because the contents of trash vary, it is difficult to achieve a consistent output from it.⁴⁴ Monterey County Health Department inspections of SE’s Fort Hunter Liggett prototype facility only report testing of trash beginning in March 2022; earlier tests focused on woody waste and coke as feedstocks.⁴⁵ Coke is a fuel that can be derived from either coal or oil.

It has been more than a decade since SE applied for a FastOx trademark,⁴⁶ nearly a decade since it received a



\$3 million investment from the Department of Defense⁴⁷ and \$5 million from the California Energy Commission,⁴⁸ and three years since SE closed a \$33 million Series A investment round led by Bill Gates's Breakthrough Energy Ventures,⁴⁹ yet there still does not appear to be a FastOx gasification plant in commercial operation. SE does not tout any FastOx plants on its website other than prototype plant at Fort Hunter Liggett.

Whether the gasification plant feeds on trash, wood or coke, MR would presumably like to transport the feedstock to Fort Bragg by rail. To do so, MR would need to restore the tracks between Fort Bragg and Willits, and may need to connect to the interstate rail system as the operator of the currently unused tracks to Cloverdale, interfering with the Great Redwood Trail Agency's railbanking plans. MR might access wood from the Mendocino National Forest by restoring tracks north of Willits; this would also interfere with the Great Redwood Trail.

Pinoli said the gasifier would not emit harmful particulate matter. In fact, it appears that the pollution emissions, carbon footprint and other consequences of a gasification plant can be either better or worse than conventional alternatives, depending on details of implementation. Questions include, among others:



- Would trainloads of fragrant trash pass through downtown to feed the gasifier? Inc. reported that SE aspires to build gasifier capacity to 100 tons of trash per day.⁵⁰
- How would the feedstock be stored? Would there be piles of trash (or wood, or coke) near new hotels and near downtown? Would seagulls and rats descend on the trashpile and become pests? How would noxious odors and dust (potentially toxic coke dust) be contained? If water is used to control dust, how much?

• What would become of the hazardous-chemical end-products of gasification? Where would the syngas be stored? Would any spill into the ground or sea? Would chemicals be transported to buyers by rail, along Pudding Creek and the Noyo River – where they could spill in Fort Bragg's water supply? Would they be transported by barge? Could they impact the Noyo fishery? Accidents happen. In 2012, the California Public Utilities Commission found a broken rail on the Skunk line, which if not repaired “would likely have resulted in a derailment ... with tragic consequences.”⁵¹ In 2018, MR's sister company, Sierra Northern Railway (SNR), had a “propane-laden” train derail in West Sacramento when a rail tie broke.⁵² Happily, there was no spillage, SNR said.

- Would MR and SE claim the gasification plant, too, is a public utility, exempt from state and local oversight?

Would MR address pollution responsibly?

With gasification, gravel, or coal, would MR address pollution issues responsibly? When MR acquired the south side of the mill site property in November 2021, the settlement agreement specified that MR assumed all liability for toxic cleanup,⁵³ but there are already questions about the company's commitment to substantive remediation of mill-site pollution that currently exists. In July 2022, MR filed a proposal with the City of Fort Bragg for remediation of the contaminated mill pond:⁵⁴ MR proposed to buttress the dam and install a cutoff wall near the



center of the pond to divide it into two smaller ponds. Critics such as Jade Tippet have warned that this plan “is not real remediation at all. Some riprap on the dam face that will settle and fall apart with sea level rise and ... no toxins are being removed.”⁵⁵

Why can't MR follow the same rules as any other developer?

In May 2022, MR announced it had “suspended the majority of its plans to redevelop” the mill site due to “hostile” actions of the Fort Bragg City Council, which MR claimed “oppose[d] any development of the property.”⁵⁶ Later that month, Pinoli wrote in the Mendocino Beacon that MR’s investors had concluded the mill site project was “virtually impossible so long as” the current city council remained in office.⁵⁷ In a June 15, 2022 YouTube post, MR stated, “Only when new leadership comes to the Fort Bragg City Council can over 300-acres of blighted property be redeveloped.”⁵⁸

But the city has simply sought to assert the same regulatory authority over MR as over any other business or property owner.⁵⁹ Meanwhile, MR is suing to develop the mill site without coastal development permits.⁶⁰ What is it about MR’s plan that is so incompatible with routine oversight that it’s worth suspending this valuable oceanfront development? Does MR fear that the above projects – a gasification plant and a gravel transload facility that could become a coal transload facility – would be blocked by the City and the Coastal Commission?

What steps will MR take to elect a pliable city council? Will voters choose a city council that holds MR to the same standards as any other developer?

1 <https://www.pressdemocrat.com/article/news/skunk-train-owners-acquisition-of-fort-bragg-mill-site-upend-city-plans-a/>

2 https://issuu.com/skunktrain/docs/little_stinker_-_fall_2021_-_volume_1_issue_1/1,

<https://m.facebook.com/groups/135497508406445/posts/391063152849878/>.

3 <https://viewdns.info/reversewhois/?q=sierra+energy>

4 <https://theava.com/archives/172830>

5 Document 302860, proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/>.

6 <https://www.times-standard.com/2022/06/10/north-coast-railroad-co-s-stb-filing-includes-potentially-fraudulent-bank-statement/>

7 <https://theava.com/archives/172830>

8 <https://www.govinfo.gov/content/pkg/FR-1998-12-09/pdf/98-32649.pdf>

9 <https://sonomamarintrain.org/stations>

10 <https://www.pressdemocrat.com/article/news/gov-brown-signs-bill-paving-way-for-300-mile-north-coast-rail/>; proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/>

11 <http://www.thegreatredwoodtrail.org/about-the-great-redwood-trail-alliance/>

12 Pages 120-121 of https://transdef.org/media/TRAC_Submission.pdf.

13 <https://www.investopedia.com/terms/c/common-carrier.asp>; <https://ageconsearch.umn.edu/record/303739/files/2020-04-23%20Final%20Report%20to%20DOA.pdf>; June 21, 2004 decision of the California Court of Appeal, City of St. Helena v. Napa Valley Wine Train, <https://caselaw.findlaw.com/ca-court-of-appeal/1239956.html>.



14 https://savenoyheadlands.com/fbvmr/21CV00850Ruling_on_Demurrer_to_Complaint.pdf

15 For discussion of this right, see https://savenoyheadlands.com/mrmdom/meyer/SCUK-CVED-2020-74939%20_Defendant_John_Meyer_Trail_Brief.pdf.

16 See Document 117 filed December 17, 2021 in the Chapter 11 bankruptcy proceedings of Wasatch Railroad Contractors, case 21-20392, U.S. Bankruptcy Court in Wyoming. The filing does not specify the type of railcars, but Wasatch's services listed on its website are for freight cars only, not tourist cars (<https://www.wrrc.us/wrr-services/>).

17 https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2016/SeidnerandElderFebruary12016InspectionReport.pdf

18 Document 302860, proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/> 19 Document 302869, proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/>

20 <https://lostcoastoutpost.com/2021/sep/2/aiming-ship-coal-out-humboldt-bay-shadowy-corporat/>

21 Document 304658, proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/>. At California State Senator Mike McGuire's June 1, 2022 town hall meeting about the GRT, Great Redwood Trail Agency chair Caryl Hart stated that MR wanted to ship gravel mined from Outlet Creek by Grist Creek Aggregates.

22 <https://www.times-standard.com/2022/06/10/north-coast-railroad-co-s-stb-filing-includes-potentially-fraudulent-bank-statement/>

23 See e.g. <https://www.opb.org/news/article/railamerica-cools-heels-on-coal-exports-from-grays/>, https://www.oregonlive.com/environment/2013/04/port_of_coos_bay_coal-export_p.html, <https://www.columbiariverkeeper.org/news/2021/6/coal-exports-demise>, https://www.gem.wiki/Coyote_Island_Terminal, https://www.oregonlive.com/environment/2013/05/kinder_morgan_drops_plans_to_b.html, <https://www.bellinghamherald.com/news/local/article131783149.html>, <https://oaklandside.org/2022/07/22/another-twist-in-the-coal-wars-west-oakland-terminal-developer-walks-away-from-settlement-deal/>

24 www.fossilfuelconnections.org/coal-trains, <https://blogs.uw.edu/djaffe/train-study/>, <https://www.sightline.org/2016/05/04/coal-trains-mean-coal-dust-period/>

25 <https://mendofever.com/2022/06/06/mendocino-railway-announces-support-for-legislation-that-aims-to-stop-mystery-coal-train/>

26 <https://www.investopedia.com/terms/c/common-carrier.asp>, <https://ageconsearch.umn.edu/record/303739/files/2020-04-23%20Final%20Report%20to%20DOA.pdf>.

27 <https://www.sltrib.com/news/environment/2022/02/08/new-settlement-oakland/>

28 Cost estimates at https://savenoyheadlands.com/rrif/ncra_letter_re_rrif.pdf.

29 <https://nocoalinoakland.info/hedge-fund-ousts-coal-exec-in-bid-to-build-oakland-export-terminal/>

30 <https://www.bellinghamherald.com/news/local/article22203096.html#ixzz1FPb9Pknd>

31 See page 22 of document 305328, proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/>. 32 https://savenoyheadlands.com/rrif/ncra_letter_re_rrif.pdf

33 <https://ageconsearch.umn.edu/record/303739/files/2020-04-23%20Final%20Report%20to%20DOA.pdf>. The article is unclear about whether the amounts "\$25 million" and "hundreds of millions" are in Canadian dollars or U.S. dollars.

34 Document 302860, proceeding AB_1305_0_X, <https://www.stb.gov/proceedings-actions/dockets-and-service-lists/>



35 <https://www.flatbottomboatworld.com/can-barges-go-to-sea/>
36 <https://www.lindmarine.com/services-products/lightering-offloading-aggregates-barging/>
37 <https://www.latimes.com/business/la-fi-canadian-gravel-20171104-htmlstory.html>
38 <https://oaklandside.org/2022/08/05/attorney-general-joins-lawsuit-to-halt-gravel-facility-proposed-at-port/>
39 https://web.archive.org/web/20170816064838/http://www.millenniumbulkeiswa.gov/assets/00_summary.pdf
40 <https://theava.com/archives/172830>
41 <https://sierraenergy.com/>
42 https://issuu.com/skunktrain/docs/little_stinker_-_fall_2021_-_volume_1_issue_1/1
43 <https://www.inc.com/magazine/202205/peter-keating/sierra-energy-gasification-mike-hart.html>
44 <https://alexcostin.com/bill-gates-backed-startup-raised-90-million-usd-trash-fuel>
45 <https://www2.calrecycle.ca.gov/SolidWaste/SiteInspection/Index/5335>
46 https://tmsearch.uspto.gov/bin/gate.exe?f=login&p_lang=english&p_d=trmk
47 <https://sierraenergy.com/u-s-department-of-defense-selects-sierra-energy-for-2013-installation/>
48 https://sierraenergy.com/?post_type=news&p=3855
49 <https://www.prnewswire.com/news-releases/sierra-energy-closes-33-million-series-a-funding-led-by-bre-akthrough-energy-ventures-300891935.html>
50 <https://www.inc.com/magazine/202205/peter-keating/sierra-energy-gasification-mike-hart.html>
51 <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/reports/annual-reports/2012-annual-report.pdf>
52 <https://www.sacbee.com/news/local/article207979799.html>
53 https://savenoyohedlands.com/mrmdom/mill_site_south/21CV00595Eminent%20DomainFinal.pdf
54 https://savenoyohedlands.com/dtsc/Combined_Final_CDP_Application_Mill_Pond_Dam_20220624_Signed.pdf
55 August 27, 2022 post by Jade Tippet on the Mendocino County 5th District Facebook group: https://www.facebook.com/groups/Mendocino5thDistrict/posts/2666546160144726/?comment_id=2666553190144023&reply_comment_id=2666984266767582
56 MR's May 5, 2022 press release was posted on May 7, 2022 to <https://www.facebook.com/MendocinoNewsPlus>.
57 <https://www.mendocinobeacon.com/2022/05/19/community-column-the-city-councils-legacy-derailing-re-development-of-the-former-mill-site/>.
58 https://www.youtube.com/watch?v=ikEl2n_rJzk
59 https://savenoyohedlands.com/fbvmr/21CV00850Summons_and_Complaint.pdf
60 https://savenoyohedlands.com/mrvfb-ccc/122-cv-04597-RMI_COMPLAINT_FOR_DECLARATORY_JUDGMENT.pdf

