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Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
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Washington, DC 20423-0001

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Re: STB Finance Docket - FD_35724_1

Update: The continuing story of the High-Speed Rail Project in layman's terms

I have previously written informing the STB board of the status of the California high-speed rail project. In my submission last spring, I suggested the construction segment that the Rail Authority was seeking early approval for crossed two environmental corridors.

While the board granted the exemption for construction in the Merced to Fresno segment, the board noted in their decision my submission that if in fact the Authority's request included two environmental segments, the board did not exempt any part of the Fresno to Bakersfield environmental segment. As you know now that was true and the Authority since attempted to get construction clearance for the Fresno to Bakersfield segment, which would cover those missing miles. The STB wisely turned down their request until further study was completed.

Why would the Authority choose a segment that crossed two environmental segments? Answer: Because they had to. It was smallest segment necessary to construct the "independent utility" required by the Federal Railroad Administration (FRA) as part of the American Recovery and Reconstruction Act of 2009. As you may know the "independent utility" chosen for California to get the ARRA

funds is for a parallel track for Amtrak for conventional rail. This choice of independent utility was supposed to be a “worst case scenario”, just in case California didn’t have the money to move forward for the rail project. They do not have the money to construct a more substantial segment so they are racing to find a way to construct this Amtrak duplicative track as a way to comply with FRA Funding Contract #5. By the way, constructing a piece of track for conventional rail was not in the California bond measure only the construction of high-speed rail was.

The Fresno to Bakersfield Segment:

The actual Fresno to Bakersfield segment is riddled with problems. It has severe subsidence issues, losing as much as a foot a year in some areas in the path of the train. The Authority hid this report for months by inappropriately labeling the report as a draft and in violation of the Public Records Act. See article with this example as well as others. http://www.examiner.com/article/california-hsr-violating-the-public-records-act-deception-or-incompetence?cid=db_articles

There are also high-voltage power lines, which the proposed high-speed train are planned to operate under however no standards have been developed by the Public Utility Commission for the high-speed train’s operation. This takes a very long time to accomplish.

There is another issue brought up in the editorial by the [Bakersfield Californian](#) concerning a route that would bypass the city of Bakersfield and would have substantially lessened the destruction to the city. It was eliminated by the High-Speed Rail Authority as an alternative. Federal agencies typically require the review of all feasible alternatives and this early elimination will surely be an issue. The editorial also stated that arrogance is a major problem with the project. Read the commentary under the article that suggests that

the plan is actually about re-building Fresno and they suggest a dream of Congressman Jim Costa.

There are many other issues that plague this segment and will not slide without legal challenge.

Project update:

At this point, discussing route problems is almost moot since the rail authority is up against an undefeatable enemy, the deadline of September 2017 set by Congress in the ARRA fund act. There is not enough time and certainly not the money to build the first legal section of the project. The FRA who has written many funding plans to fix the state of the project but it cannot re-write another plan to change this deadline. The LA Times article written by Ralph Vartabedian wrote about the speed of construction necessary to make it to the deadline.

<http://articles.latimes.com/2012/may/14/local/la-me-bullet-risks-20120514>

“The bullet train track through the Central Valley would cost \$6 billion and have to be completed by September 2017, or else potentially lose some of its federal funding. It would mean spending as much as \$3.5 million every calendar day, holidays and weekends included -- the fastest rate of transportation construction known in U.S. history, according to industry and academic experts.” **May 14, 2012**

The newest plan:

So after Superior court Judge Kenny struck down the legality of the funding plan since the Authority violated Prop 1A and did not have the funds or the environmental work cleared for the first Initial Operating segment, aka, “usable segment,” everyone wondered how in the world would the Authority comply. The answer came from the House Transportation Hearing held January 15, 2014, when Authority

Chairman Dan Richard revealed the board will vote to re-label the Initial Construction Section (ICS) as the “usable segment” instead of the 300 miles segment they originally called the Initial Operating segment.(IOS) The term “usable segment” and IOS have been used interchangeably by this board and previous boards.

While Richard revealed there was no such term as the IOS in the law though true, this “made-up term” has used throughout the years in all the legal documents the Authority. Apparently they think they have found a loophole that will satisfy the court. They have a rather far-fetched opinion (High-Speed Rail 1211030) written by the Leg Counsel June 8, 2012 just before the appropriation vote. In it they offered that the ICS could be an IOS. The AG’s office didn’t use it in court because they apparently knew it contained a weak argument. It was part of the court’s records but the judge paid no mind to it when he ruled. The two state senators who requested the opinion didn’t instill confidence in them since both Senators Simitian and DeSaulnier voted no for the appropriation.

The court only asked that the Authority rescind their legally inappropriate funding plan however the judge stopped short and didn’t ask to see the new one. But one would expect that logic would apply, that whatever the Authority chose as the new “usable segment,” would be in the bounds of the law considering the court ruling.

There is documented proof that the current Authority Chairman, 2 previous chairmen and an attorney presenting the Authority as well as high-ranking staff that have all said this small 130 mile segment could not be a “usable segment.” They admitted that the proper ridership would only be obtained with the construction of a larger section.

Here’s an excerpt from my article, which was widely read after it was published on January 17, 2014 as to why the new plan won’t work.

http://www.examiner.com/article/after-the-house-transportation-hearing-thoughts-by-the-tos-legal-team?cid=db_articles The primarily reason it won't work is the difference in federal and state laws namely: Independent Utility vs. Usable Segment.

Stuart Flashman, co-counsel on the Tos/Fukuda/Kings County case states the federal definition of "independent utility" means "if they can build it as such that Amtrak can use that segment once it's built then that satisfies the independent utility requirements under the federal grant. But it doesn't satisfy the state requirements for the usable segment for the use of bond funds. For the use of bond funds among other things whatever they build it has to have two stations, be high-speed rail ready, be electrified, have positive train control, arguable it has to have rolling stock etc."

In this case, the possible selection of the smaller segment is problematic. Even though it's the identical segment previously named as an Initial Construction Section (ICS) but with the change in name to a "usable segment," the additional ballot measure requirements come with a higher price tag.

"It's got to cost far more than the \$6 billion they now have. " We're probably talking more in the range \$10-12 billion, or even more. If they are going to put out a funding plan for the ICS and call it a 'usable segment,' they have to show where the funds are going coming from to do all those additional things, "said Stuart Flashman, co-counsel for the Tos/Fukuda/Kings County case.

Flashman also explains that not having a subsidy is the crucial difference between the federal and state law. He explained that with enough time and money you could fix environmental and funding requirements. "What isn't fixable is the bond measure's requirement that a usable segment not require an operating subsidy."

Proper ridership and realistic operating costs are necessary to establish that no operational subsidy will be required. The Authority has to prove this.

Suggestions from the Governor on how the state will match federal funds already spent:

While the current FRA Grant funding plan #5 allows for the advance spending of bond funds, April 1, 2014 begins a period called Prop1A catch up. The state must begin to match the federal grant funds spent. The immediate problem is \$180 million in state matching funds must be spent starting April 1, 2014. Governor Jerry Brown has a solution, he has requested \$250K from the Cap-and-Trade proceeds for the project but even if those dollars are approved, they probably won't be until early summer when the budget is approved so the FRA could again change those requirements by issuing Funding Plan #6 which is presently being worked on. But a bigger question is where will the rest of the Prop 1A catch up funds come from, namely \$823 million due between July 1, 2014 and June 2015?

Will the state legislature approve Cap-and-Trade for the HSR project?

As far as the use of Cap-and-Trade funds, there are many organizations and people protesting the use of these funds for the rail project since they don't meet the requirement for use of the funds per AB-32 so getting these funds is not a sure thing. Here's a really simple example. In the law it says that projects must be ready to show by 2020 that they can reduce emissions to 1990 levels. It is probable that nothing will be finished by 2020 that will satisfy those requirements.

It is also a known fact the construction process creates substantial emissions. The Authority's report says they excluded the construction aspect because they don't have all the information yet

but they did say they plan to remediate by the planting of bunches of trees in the Central Valley and they plan on buying credits to offset emissions.

I am not an expert on cap-and-trade but if logic applies here, why would an emitter of GHG emissions be allowed to receive auction dollars? From a practical basis, there are many other projects far more worthy than the high-speed rail project that would have long-reaching and immediate positive effects on the environment. See my article on the subject.

http://www.examiner.com/article/cap-and-trade-revenue-eyed-by-the-governor-for-the-hsr-project?cid=db_articles

Long term plans for finances:

There are no federal dollars in sight for high-speed rail. None are written in the Federal budget for the 2014 fiscal year that passed this month.

And it looks like the Treasurer's office has there doubts to because in the California's Weekly Treasurers report dated January 21, 2014, it questions the Governors proposal about the High-Speed Rail project. Here is a direct quote:

“Interestingly, the plan envisions \$25.3 billion being available to spend on HSR through FY 2018-19. The document doesn't specify where all that money would come from. Known sources total roughly \$12.25 billion: about \$8.5 billion of bond funds under Proposition 1A (approved by voters in 2008); \$3.5 billion of federal funds; and the \$250 million of cap-and-trade funds. That leaves a \$13.1 billion gap in the Governor's HSR plan at a time when Republicans in Congress are loathe to spend another dime on HSR, and private sources won't loosen their purse strings until the project proves financial viable.”

Note: In order to use state bond funds, a 50% match if found, the voters were promised they would be federal or private funds. Therefore there may be a total of \$8.5 billion of state bond funds left but without a matching source none of them can be used for the high-speed rail project. At this time no bond money is available since the state failed to win its validation suit brought by the High-Speed Rail Authority. According to press reports it was the first time in California history a court did not validate bonds. See more:

http://www.examiner.com/article/court-instructs-hsr-to-redo-funding-plan-refuses-to-validate-state-bonds?cid=db_articles

Solyndra vs High-Speed Rail

Solyndra received \$535 million dollars before declaring bankruptcy in 2011 and ironically it received these funds under the ARRA law, the same law that granted the HSR Authority their grant money.

Note another similarity, more than half of the Solyndra money went to a Redwood City-based contractor, Rudolph & Sletten, for plant construction. Apparently in 2005 Rudolph & Sletten was acquired by Tutor Perini Corporation (NYSE:TPC). This is the same company, with a less than stellar record, that was awarded the first design build contract for the High-Speed Rail Project after a rocky and controversy filled bidding process. The rules changed and no one knew it and Tutor Perini came out the winner. See Californians Advocating Responsible Rail Design's post (CARRD)

<http://www.calhsr.com/uncategorized/changing-the-bid-process-abuse-of-power-and-a-bad-idea/>

Solyndra was an embarrassment to the President. The outcome of the high-speed rail project will be yet another detraction from the President's legacy and could in fact be Solyndra on steroids.

Parsons Brinckerhoff- their role and the exodus of DOT personnel:

This project is being driven by Jeff Morales who has past allegiance and perhaps present allegiance to his past employer Parsons Brinckerhoff. (PB) There are people working in the role of staff as Deputy Directors who get their paychecks from PB. It is still unknown exactly how many PB people are working under the appearance of staff guiding consulting dollars to PB's coffers.

Also Roy Kienitz and John Porcari are former employees of the federal branch of the Department of Transportation (DOT) both left and are now work for Parsons Brinckerhoff on transportation projects.

Before Kienitz left the DOT, he wrote a letter stating that the project could not spend the federal monies first and then soon after he left and went to work for PB, suddenly FRA funding plan #5 appeared and it in fact allows federal dollars to be spent first.

The consulting fees going to PB are immense. The PB organization has the reputation of draining every dollar they can from a project before the project dies.

In a report written about the aftermath of Boston's Big Dig project, which was one of the most expensive projects in history with billions of cost overruns, this exchange was found from a transcript about the project.

<http://www.nssa.us/journals/2010-34-2/pdf/34-2%2017%20Smith.pdf>

``Is there a strategy to back ourselves out of this job? Or are we just going to continue to suck on the cow as long as it lives?" the unidentified manager asked, according to the transcript. ``You suck on the cow as long as it's alive," another manager replied. ``Absolutely. You've got a thousand people on this job," the first manager said, according to the transcript. To Ginsburg, the exchange illustrates Bechtel/Parsons Brinckerhoff's willingness to ``put its own welfare

and profit ahead of the interests of its client, the Commonwealth and the Turnpike Authority," he wrote in his letter."

I bring this analogy to you so you can apply it to the California High-Speed Rail project today. I suggest this cow is now on life-support. All that's left is the pronouncement of death and the writing of the death certificate.

While both then State Senator Lowenthal and State Senator Simitian were in proponents of the concept of high-speed rail, they questioned this particular plan. Before the Appropriation vote in July 2012, Senator Simitian reminded his colleagues it wasn't about the concept of high-speed rail. They were "not voting for a vision but a particular plan and this is the wrong plan, in the wrong place and at the wrong time."

I urge the Board members of the STB, regardless of your political affiliation, to let logic and good judgment prevail and not allow this project to move forward.

Thank you,

A handwritten signature in cursive script that reads "Kathy Hamilton".

Kathy Hamilton
Menlo Park, California
Katham3@gmail.com

Note about the author: Kathy Hamilton is an independent journalist, an independent voter, a board member of Community Coalition on High-Speed Rail and a resident in Menlo Park. I became involved in writing about this project in 2009 and have written 202 articles. See a brief synopsis by date. <http://www.examiner.com/transportation-policy-in-san-francisco/kathy-hamilton> I have also attended or observed literally 100's of meetings on a federal, state and local level on this subject.

