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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423-0001

Re: California High-Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section. (STB Finance Docket No. 35724 (Sub-No. 1))

Dear Ms. Brown:

In view of pending California appellate court proceedings in which the California High Speed Rail Authority's financial viability currently hangs in the balance, CC-HSR requests an extension of time beyond March 7, 2014 within which interested parties may respond to the Authority's Petition for Exemption of its Fresno to Bakersfield HST Section.

When the Board granted the Authority's first petition for an exemption on June 13, 2013 the federal and state funding required for construction of the Merced to Fresno section was not in question. That is not the case for the pending exemption petition. As will be shown, critical funding for the project is now "up in the air" depending on the outcome of these appellate proceedings.

This request for an extension of time is made because, until these expedited appellate proceedings are determined, CC-HSR (and other persons planning to respond to the Authority's exemption petition) are in a quandary as to how to respond because of the uncertainty as to the Authority's ability and plans to finance and construct its designated "usable segment" (Merced to San Fernando Valley), which includes the Fresno to Bakersfield section. Under these circumstances, to require definitive responses from persons opposed to the Authority's exemption petition would be unrealistic, unfair and not likely to be helpful to this Board.

The Community Coalition on High-Speed Rail is a grassroots, non-profit corporation, based on the San Francisco Peninsula, that is working through public advocacy, litigation, and political action to make sure the proposed California High Speed Rail project doesn't adversely affect the economy, environment, or quality of life of California's existing communities. For more information please visit: www.cc-hsr.org. You may contact CC-HSR by mail at 2995 Woodside Road #400-362, Woodside, CA 94062.

On November 25, 2013 the Sacramento Superior Court issued rulings in two separate cases concerning the Authority's use of state bonds for the high-speed rail project. (These rulings can be found on the website of the Sacramento Superior Court for Case Nos. 34-2011-00113919 and 34-2013-99140689; see <https://services.saccourt.ca.gov/publicdms/Search.aspx>.)

In the Validation case (an in rem proceeding) the Authority requested that the court validate the issuance and sale of \$8 billion of general obligation bonds, but the Superior Court denied this request on the ground that there was no evidence in the record to support the statutory finance committee's determination that issuance of the bonds was, as required, necessary and desirable.

In the other case (the Tos case), on November 25, 2013 the Superior Court ruled that a writ of mandate should issue requiring the Authority to rescind its Funding Plan for its designated "usable segment." This ruling was based on the court's August 16, 2013 decision that the Authority had abused its discretion in approving the Funding Plan because it did not comply with the provisions of the Bond Act that required that the Funding Plan (a) identify the "sources of all funds to be invested in the corridor, or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means," and (b) certify that the "Authority has completed all necessary project-level environmental clearances necessary to proceed to construction." Cal. Streets & Highways Code section 2704.08(c)(2)(D), (K). The court's peremptory writ of mandate was issued on January 14, 2015.

As recent as January 15, 2014, the Authority's Chairman, Dan Richards, testified before the House Transportation Subcommittee on Railroads, Pipelines, and Hazardous Materials that the Authority intended to comply with the Superior Court's decision. In a dramatic turnaround only nine days later, on January 24, 2013 the Authority filed with the California Supreme Court a 49-page Petition For Extraordinary Writ of Mandate, Application For Temporary Stay, and Memorandum of Points and Authorities which asserts:

- "Two rulings of the Sacramento Superior Court . . . imperil the [high-speed rail] project . . . and threaten state and federal funding for the project." (p. 1)
- "Left undisturbed, the [Validation case] ruling would disrupt the State's ability to finance the high-speed rail project." (p. 1)
- "[T]he trial court's rulings have blocked access to bond funds appropriated by the Legislature for the foreseeable future and cast a cloud of uncertainty over the entire voter-approved project." (p. 10)
- "The consequences flowing from these rulings threaten to choke off funding for high-speed rail" (p. 15)
- "[T]he delay [the Authority] now faces as a result of the court's decision risks the catastrophic, for two reasons. First, the federal grant funds, by their terms, must be matched by the State and be spent by 2017 [citations omitted]. The kind of delays the Authority now faces puts those

billions of dollars in jeopardy, because it is not clear that the bond proceeds will be available in time to match. Second, opponents of the project have used the trial court's ruling to fuel political efforts to withhold the federal grants entirely. (H.R. No. 3893, 113th Cong., 2d Sess. (2014).” (pp. 35-36)

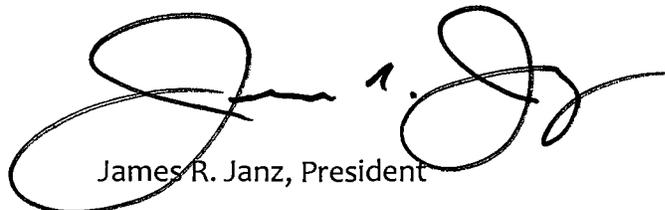
On January 29, 2014 the California Supreme Court referred the Authority's Petition and Request For A Stay to the Third District Court of Appeals with directions that proceedings be expedited. On February 14, 2014 the District Court of Appeals issued an alternative writ of mandate and temporary stay of the trial court's writ of mandate, ordering that respondents response to the alternative writ be filed by March 17, 2014, and that petitioner's reply be filed 15 days thereafter (http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=3&doc_id=2067776&doc_no=C075668). It is expected that oral argument will be held by mid-April with a decision by the appellate court not long thereafter.

At this point, no one knows whether the trial court's rulings will be upheld or reversed, in whole or in part. If upheld because that is what the law requires and if the Authority's dire predictions of catastrophic consequences are correct, there will have to be an “agonizing reappraisal” of the California high-speed rail project at every level. These are truly extraordinary circumstances that warrant this out-of-the-ordinary request for an extension of time to respond.

Accordingly, we request that the time to respond to the Authority's pending petition for exemption be extended to a date 15-20 days after the decision of the Third District Court of Appeal on the matters now pending before that court. Alternatively, the Board could extend the time to a date certain in early May of 2014 that it could adjust as needed.

Such an extension is not likely to delay the Authority's ability to commence construction on the Fresno to Bakersfield section. There is massive engineering design work to be completed (from 15% to 100%) because the design-build contractor for the Fresno-Bakersfield section will not be selected for several months since the Authority does not plan to release its RFP for this contract for at least another two months, right-of-way acquisitions for this section have not even started, the required agreements with Union Pacific and BNSF have not materialized, and certification of the project-level EIR/EIS appears to be some months away. Realistically, construction on the Fresno-Bakersfield section is not likely to start until sometime in 2015 even if the Authority should prevail in its legal challenges.

Respectfully submitted,



James R. Janz, President

cc: Service list