

Supervisor **John Pedrozo**, Chair, Merced County  
Supervisor **Henry Perea**, Vice-Chair, Fresno County  
Councilmember **Don Tatzin**, Vice-Chair, City of Lafayette  
Councilmember **Patrick Hume**, City of Elk Grove  
Supervisor **Vito Chiesa**, Stanislaus County  
Supervisor **Scott Haggerty**, Alameda County  
Supervisor **Allen Ishida**, Tulare County  
Councilmember **Bob Johnson**, City of Lodi  
Supervisor **Doug Verboon**, Kings County  
Supervisor **Brett Frazier**, Madera County



## San Joaquin Joint Powers Authority

Alternate **Rodrigo Espinoza**, City of Livingston  
Alternate **Nathan Magsig**, City of Clovis  
Alternate **Federal Glover**, Contra Costa County  
Alternate **Don Nottoli**, Sacramento County  
Alternate **Richard O'Brien**, City of Riverbank  
Alternate **Tom Blalock**, BART  
Alternate **Bob Link**, City of Visalia  
Alternate **Mike Maciel**, City of Tracy  
Alternate **Justin Mendes**, City of Hanford  
Alternate **Andrew Medellin**, City of Madera

August 31, 2016

241406

Surface Transportation Board  
Attn: Docket No. EP 734  
395 E Street Southwest  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
August 31, 2016  
Part of  
Public Record

**SUBJECT: COMMENTS REGARDING FEDERAL SURFACE TRANSPORTATION BOARD'S NOTICE OF PROPOSED RULEMAKING ON DISPUTE RESOLUTION PROCEDURES**

To Whom It May Concern:

Thank you for the opportunity to review and comment on the proposed Fixing America's Surface Transportation (FAST) Act of 2015 Dispute Resolution Procedures. After reviewing the proposed rule, the San Joaquin Joint Powers Authority (SJJPA) the managing agency for the Amtrak San Joaquin intercity service does not feel the proposed rule meets the intent and/or requirements of FAST. Please see our comments below:

1. The proposed rule as written does not establish binding dispute resolution procedures for disputes brought before the Surface Transportation Board (STB).
  - When a State or Amtrak requests the STB to conduct dispute resolution under United States Code, Title 49, Section 24712(c), Congress intended the decision of the STB to be binding on the parties. Subsection (3).
  - The proposed rule adds a new Section 1109.5 which would apply the existing mediation procedures under Code of Federal Regulations Section 1109 and also allows a party to request informal STB assistance in securing outside professional mediation services in the absence of a complaint proceeding before the STB.
  - In our experience with the implementation of PRIIA 209 and the Federal Mediation and Conciliation Service (FMCS) have demonstrated, it is critical that parties have recourse to an efficient mechanism to definitively resolve disputes. Non-binding mediation, or informal STB assistance in securing outside professional mediation, as proposed under this rule, is unlikely to be productive.

#### MEMBER AGENCIES

Alameda County - Contra Costa County Transportation Authority - Fresno Council of Governments - Kings County Association of Governments - Madera County Transportation Commission  
Merced County Association of Governments - Sacramento Regional Transit - San Joaquin Regional Rail Commission - Stanislaus Council of Governments - Tulare County Association of Governments

2. The STB should adopt binding arbitration as the dispute resolution procedure for disputes brought under Section 24712.
  - Dispute resolution should be conducted as binding arbitration either before the STB, or before a third-party arbitrator with the STB exercising limited review.
  - If the STB plans to use third parties for dispute resolution, the STB should issue a supplemental NPRM addressing the following:
    - A. Selection process for the proposed arbitrator;
    - B. Payment for arbitration services if third-party; and
    - C. Rules of practice for arbitration.

Dispute resolution should be mandatory.

- a. Upon request from one of the parties, we believe that the STB has the authority to compel, and should compel, arbitration or such other dispute resolution mechanisms that the STB adopts.
3. If professional mediation is acceptable as the only form of dispute resolution available under Section 24712, the STB's role in the proposed procedures is insufficient. It is not clear what it means for the STB to "informally assist in securing outside professional mediation services." Specific questions that arise include:
    - a. Will the STB maintain a list of mediators?
    - b. Will the STB intervene when parties cannot agree to a mediator?
    - c. Will the STB establish terms for the payment of mediation services?
    - d. Will the STB require parties to participate in mediation?

Thank you for your consideration of the comments above.

Sincerely,



BRIAN SCHMIDT  
Director of Operations  
SJPA