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The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room 100
Washington, DC 20423-0001

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ENTERED
Office of Proceedings
November 6, 2014
Part of
Public Record

November 6, 2014

Subject: *Time Extension to Intervene and Reply to STB Finance docket No. 35861 Petition for Declaratory Order*

Dear Ms. Brown:

On behalf of the Roar Foundation, a 501(c) (3) organization, we hereby request an extension for the time in which to intervene and file an opposition to the above Petition for Declaratory Order filed by the High Speed Rail Authority (HSRA). The Roar Foundation is a stakeholder in the High Speed Rail project and accordingly has standing to object to the HSRA's Petition.

We became aware of the Petition on November 5, 2016¹. Although the Petition seeks declaratory relief with respect to the Fresno-Bakersfield Segment only, the Petition, should it be granted, will be relied upon presumably for all segments, including the Palmdale-Burbank High Speed Rail Train segment which is of direct concern to our client². In fact, the HSRA specifically references the Palmdale-Burbank segment in footnote 8 of its Petition, wherein it states, "Similarly in July 2014, the Authority, as lead Agency under CEQA, issued an EIR Notice of Preparation (NOP) for the Palmdale to Burbank Segment, which is similar in purpose to an EIS notice of intent under NEPA. Again the Authority stated it prepared the NOP voluntarily and was not waiving any preemptive effect on CEQA's application." Thus, the issue

¹ Notice of the Petition was given only to the parties of the seven lawsuits filed with respect to the Fresno-Bakersfield Segment, inter alia, *Coffee-Brimhall LLC v. California High-Speed Rail Authority* (Case No. 34-2014-80001859); *County of Kings, et al., v. California High Speed Rail Authority* (Case No. 34-2014-80001861); *County of Kern v. California High-speed Rail Authority* (Case No. 34-2014-80001863); *First Free Will Baptist Church of Bakersfield v. California High Speed Rail Authority* (Case No. 34-2014-80001864); *Dignity Health v. California High-Speed Rail Authority* (Case No. 34-2014-80001865); *City of Bakersfield v. California High-speed Rail Authority* (Case No. 34-2014-80001908); *City of Shafter v. California High-Speed Rail Authority* (Case No. 34-2014-80001908).

² The Roar Foundation operates a big cat animal preserve, Shambala, in Acton California. The Roar Foundation submitted scoping comments with respect to the various proposed alignments for the Palmdale to Burbank segment of the High Speed Rail on September 10, 2014.

before the Surface Transportation Board (STB) will likely affect the rights of all stakeholders of all segments. Clearly the Authority is seeking to prevent other stakeholders from seeking remedies otherwise available under CEQA by establishing a precedent with the STB (without notice to such stakeholders and an opportunity to be heard). It should be noted that the Programmatic Environmental Reports certified by the HSRA in 2005 and 2008 clearly state that the HSR Project is subject to CEQA compliance, which, admittedly on page 10 of the Petition, includes injunctive relief and other remedies that are available to stakeholders after an EIR is certified.³ After having advised stakeholders at public scoping meetings (as well as in the PEIRs issued in 2005 and 2008) that the HSRA is required to follow CEQA, it now seeks to avoid one of the most important remedies afforded stakeholders for its failure to comply.

Additionally, HSRA is requesting expedited relief for its Petition which should not be granted. The Authority, at page 16 of its Petition, states that "To facilitate expedited consideration, the Authority has served a copy of this Petition for Declaratory Order on all counsel of record of the Petitioners in the Lawsuits." However, the result of the STB's ruling on this expedited request affects not only the litigants in the Lawsuits, but all other stakeholders who would potentially be bound by this ruling. Therefore, expedited consideration should not be granted in this case. It is our view that it is most appropriate that the STB postpone its decision until the California Supreme Court can render a final judicial determination on whether the Interstate Commerce Commission Termination Act (ICCTA) preempts CEQA under the circumstances being litigated in the Lawsuits. At the very least the STB should permit full briefing of the issues briefed in the Petition so that the STB can make its decision based upon a full understanding of the law presented, which raises issues not addressed by the previous cases cited by the Petitioner in its Petition.

For the above reasons, we respectfully request that the Surface Transportation Board grant additional time for intervention and briefing so that these very important issues can be properly briefed by all affected stakeholders.

Very truly yours,



Mary C. Alden

³ 2005 EIR, Section 1.1 states "The proposed HST system in the Bay Area to Central Valley corridor is subject to environmental review under CEQA and the Authority is both the project sponsor and the lead agency for CEQA compliance." 2008 EIR, Section 1.1 states "The proposed HST system in the Bar Area to Central Valley corridor is subject to environmental review under CEQA and the Authority is both the project sponsor and the lead agency for CEQA compliance."