

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35724 (Sub-No. 1)

CALIFORNIA HIGH-SPEED RAIL AUTHORITY
—CONSTRUCTION EXEMPTION—
IN FRESNO, KINGS, TULARE, AND KERN COUNTIES, CAL.

Decided: December 20, 2013

By petition filed on September 26, 2013, California High-Speed Rail Authority (Authority), a state agency formed in 1996, seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for authority to construct an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Line).¹

In a decision served December 4, 2013, and published in the Federal Register on December 9, 2013 (78 Fed. Reg. 73,921), the Board instituted a proceeding and extended the deadline for comments on the transportation merits of the proposed construction to December 24, 2013. The Board also denied the Authority's request that the Board conditionally grant the exemption authority by addressing the transportation aspects of the proposed project before the environmental review process has been completed.

On December 9, 2013, Michael LaSalle filed a letter requesting that the Board require the Authority to notify all landowners within and along the proposed Fresno-to-Bakersfield alignments, as well as all parties of record in the main docket (which pertains to the Merced-to-Fresno segment) of this proceeding and the comment deadline. LaSalle also requests that the Board amend the comment deadline to a reasonable time following the Authority's and the Federal Railroad Administration's issuance of the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and after their final decisions regarding the proposed project, including alignments and station locations, have been made. On December 16, 2013, the Community Coalition on High Speed Rail filed a letter joining in LaSalle's requests.

On December 12, 2013, the Citizens for California High Speed Rail Accountability (CCHSRA) filed a letter requesting that the Board extend the comment period to January 31,

¹ By decision served June 13, 2013, in California High-Speed Rail Authority—Construction Exemption—in Merced, Madera, & Fresno Counties, Cal., FD 35724 (the main docket), the Board granted an exemption for the Authority to construct the first 65-mile segment of the planned California High-Speed Train System (HST System), between Merced and Fresno, California. The Line is the second segment of the proposed HST System.

2014, because it only recently became aware of the petition and because the December 24 deadline coincides with the holiday season.² CCHSRA also requested that the Board consider providing notice to all impacted landowners in Fresno, Kings, Tulare, and Kern Counties.

Notice of the Proceeding. Both LaSalle and CCHSRA request that all affected landowners be given direct notice of this proceeding. Generally, however, publication in the Federal Register is legally sufficient notice to interested or affected parties.³ Moreover, attempting to identify and provide direct notice to all landowners who might potentially be affected would be unworkable.⁴ Also, ample notice of the proposed construction project and opportunity to participate in the environmental review for the proposed project have been provided through the EIR/EIS process. That process included five public meetings in 2009 on the potential scope of the Draft EIR/EIS, three public hearings in 2011 on the Draft EIR/EIS, and three public hearings in 2012 on the Revised Draft EIR/Supplemental Draft EIS. All the meetings and hearings were held in the project area including Fresno and Bakersfield.

However, given the significant public interest in this proceeding, the Board will require the Authority to notify all parties of record in the main docket by providing them with a copy of its petition for exemption in this sub-docket, as well as a copy of this decision, by January 3, 2014, and to certify contemporaneously to the Board that it has done so. Those parties, and any other interested persons who wish to participate in this sub-docket as a party of record, will then have until January 21, 2014, to notify the Board of their intent to participate in this sub-docket as a party of record. Only persons who participate as a party of record in this sub-docket by filing a notice of intent or filing comments (or both) will be entitled to service of pleadings and subsequent Board decisions in this sub-docket.

Extension of the Comment Period. In recognition of the new notice procedure set forth above, and taking into consideration the requests for an extension of the current comment deadline, we will extend the deadline for comments on the transportation to February 14, 2014. This extension should provide sufficient time for interested persons to comment on the proposed transaction.

Waiver of service requirement for individual private citizens. The Board is interested in encouraging public participation by all interested persons in this proceeding. As was done in the main docket,⁵ to help create a comprehensive record that embodies the full spectrum of interests

² In a letter filed on December 17, 2013, William Descary, a Bakersfield resident, also requests an extension of the comment period to January 31, 2014, in light of the holiday season.

³ Friends of Sierra R.R. v. ICC, 881 F.2d 663, 667-68 (9th Cir. 1989) (citing Fed. Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947)); accord State of Cal. ex rel. Lockyer v. FERC, 329 F.3d 700, 707 (9th Cir. 2003).

⁴ See Nat'l Trails Sys. Act & R.R. Rights of Way, EP 702, slip op. at 7-8 (STB served Feb. 16, 2011).

⁵ See Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal., FD 35724 (STB served May 14, 2013).

involved and to facilitate the ability of individual private citizens to participate in that process, the service requirements of 49 C.F.R § 1104.12(a), which require every document filed with the Board to be served upon all parties to the proceeding, will be waived for individual private citizens who file comments in this proceeding. Thus, filings made by individual private citizens will be included in the public record of this proceeding (and posted on the Board's website) regardless of whether the filings comply with the service requirements of § 1104.12(a). All other parties of record, including citizen organizations, are expected to comply with the Board's service requirement regulations and serve all parties of record listed on the Board's service list for this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Replies to the petition for exemption are due by February 14, 2014.
2. As discussed above in this decision, the Authority must notify all parties of record in the main docket of this proceeding of the proposed transaction by January 3, 2014, and certify contemporaneously to the Board that it has done so.
3. Any person who wishes to participate in this proceeding as a party of record must file with the Board a notice of intent to participate by January 21, 2014.
4. The service requirements under 49 C.F.R. § 1104.12(a) are waived for individual private citizens participating in this proceeding.
5. This decision will be published in the Federal Register.
6. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.