

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35724

CALIFORNIA HIGH-SPEED RAIL AUTHORITY—CONSTRUCTION EXEMPTION—IN
MERCED, MADERA AND FRESNO COUNTIES, CAL.

Decided: April 15, 2013

On March 27, 2013, California High-Speed Rail Authority (Authority), a noncarrier state agency, filed a petition for exemption (Petition) under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct an approximately 65-mile dedicated high-speed passenger rail line between Merced and Fresno, California (the Project). Concurrently, the Authority filed a motion to dismiss the Petition for lack of jurisdiction (the Motion to Dismiss), asserting that the Project does not require Board approval under 49 U.S.C. § 10901 because it will be located entirely within California, will provide only intrastate passenger rail service, and will not be constructed or operated “as part of the interstate rail network” under 49 U.S.C. § 10502(a)(2)(A).

The Project is one section of the planned California High-Speed Train System (HST). Also referred to as the Merced to Fresno HST Section,¹ the Project would be the first of nine sections of the HST, which, when complete, would provide intercity passenger rail service at speeds up to 220 miles per hour over more than 800 miles of rail line, primarily between San Diego and San Francisco.² The Authority intends to construct the Project in segments and plans to award contracts for the final design and construction of the first 29-mile portion of the approximately 65-mile line in the Project in the spring or summer of 2013.³ It requests expedited consideration of the Petition and Motion to Dismiss and a decision effective by June 17, 2013, so it can achieve this goal and “allow the public to expeditiously gain the benefits” of federal and state investment in the Project, including approximately \$3.49 billion in federal grants.⁴

¹ Petition 2.

² Petition 3. The entire HST system will connect the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. Id.

³ Pet. 4, 13-14.

⁴ The Petition notes that approximately \$2.321 billion derives from the American Recovery and Reinvestment Act of 2009 and must be spent by September 2017. Pet. 14.

To date, the Board has received comments from residents, landowners, a Member of Congress, state and local elected officials, water districts, school districts, and grassroots organizations. Several of those parties have requested an extension of the 20-day period under 49 C.F.R. § 1104.13(a) to reply to the Petition and the Motion to Dismiss, and some have suggested that they may wish to seek discovery. On April 11, 2013, the Authority filed a response to those requests.

Given the significant interest in public participation in this proceeding, the Board is considering a procedural schedule to govern this case, which it plans to issue as soon as possible. Responses to the Petition and the Motion to Dismiss, which otherwise would be due on April 16, 2013, need not be filed in the meantime.

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

It is ordered:

1. A petition for exemption proceeding is instituted.
2. The deadline for responses to the Petition and Motion to Dismiss is tolled pending further order of the Board.
3. This decision is effective on its service date.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.