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SERVICE DATE - DECEMBER 6, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34111

NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD—
PETITION FOR DECLARATORY ORDER

Decided: December 5, 2001

By petition filed on October 11, 2001, North San Diego County Transit Development Board, d/b/a North County Transit District (NCTD), requests the Board to institute a declaratory order proceeding and to determine that the City of Encinitas, CA (City) is prohibited from requiring NCTD to obtain a permit prior to constructing the Encinitas Passing Track on NCTD's San Diego Subdivision main track.¹ NCTD argues that, under 49 U.S.C. 10501(b)(2) and 10901, such a permitting requirement is preempted by, and intrudes upon, the Board's exclusive jurisdiction over interstate rail operations.

On October 31, 2001, the City and the California Coastal Commission (collectively, respondents) filed separate replies in which they argue that 49 U.S.C. 10501(c)(2) specifically excludes mass transportation from the Board's jurisdiction, that NCTD's passing track would primarily enhance its commuter service, and that the City's actions are a legitimate use of its police powers. For these reasons, respondents contend that the Board lacks jurisdiction over the passing track and that the City's permit requirement is not preempted.

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. In this case, there is a controversy on the present record regarding the applicability of 49 U.S.C. 10501(b), and the record contains insufficient information to determine the extent of the Board's jurisdiction over the passing track. Therefore, under the Board's authority at 5 U.S.C. 554(c) and 49 U.S.C. 721, a proceeding will be instituted. The parties are directed to provide information on the reasons why the proposed track is being constructed and its anticipated impact on, and use in, interstate freight operations.

¹ NCTD is a regional California state agency that operates a commuter rail service over its main line in the San Diego, CA area. In addition, the National Railroad Passenger Corporation operates intercity rail passenger service over the line, and The Burlington Northern and Santa Fe Railway Company provides freight service.

The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112.1 et seq. Both NCTD and the City submitted proposed procedural schedules. NCTD's proposal provides for a more expedited schedule. Due to the limited scope of the proceeding, and the need of NCTD for a prompt decision,² an expedited procedural schedule will be adopted.

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

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.

2. Comments by NCTD are due by December 17, 2001. Comments by respondents are due by January 4, 2002.

3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² NCTD states that it must use funds allocated for this project by February 2002.