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January 13, 2014

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
January 22, 2014  
Part of  
Public Record

Re: **STB Finance Docket No. 35724 (Sub-No. 1).**

California High-Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section.

Dear Ms. Brown:

Citizens for California High-Speed Rail Accountability (CCHSRA) is a non-profit citizens organization. Our organization is composed of people living within Kings County, California, many of whom own land within the California High-Speed Rail Authority's (Authority) proposed alignments in the Fresno to Bakersfield section of its proposed project. CCHSRA respectfully submits this letter regarding the following matters and requests:

**The Authority Misunderstood its Notice Requirements.**

The Board's December 20, 2013 decision ordered the Authority to "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." Our organization was one of these parties of record. Yet, we just received from the Authority copies of the Petitions it filed with the Board on March 27, 2013 in Finance Docket No. 35724-0, rather than its new Petition that it filed with the Board on September 26, 2013 in Finance Docket No. 35724-1. Perhaps by mistake or misunderstanding, it appears that the Authority is not complying with the aforementioned notice requirement of the Board's decision.

**There Is No Need or Urgency to File Replies by February 14, 2014.**

In addition, the Board's December 20, 2013 decision extended the deadline for accepting replies to this Petition to February 14, 2014, from December 24, 2013. While we appreciate this extension, we see no justification for a February deadline. After the Authority filed its Petition for Exemption in this matter on September 26, 2013, the Authority stated on page 2 of its November 15, 2013 *Project Update Report to the California State Legislature* that "[t]he Authority Board of Directors will make a final decision about alignments and station locations

after issuance and consideration of the final [environmental] documents in Spring, 2014.”<sup>1</sup> Moreover, the Authority confirmed on page 14 (18 pdf) of the same document that the anticipated date for the FRA’s Record of Decision will be in the Spring of 2014. Hence, it will be a number of months before these final decisions and documents are finalized and adopted by the Authority and FRA.

In addition, the Authority’s *Staff Recommendation: Preferred Alternative – Fresno to Bakersfield Section*, dated November, 2013, declared on page 1-1:

“[T]he Authority staff will present their recommendation [of preferred alternatives] as an action item to the Authority at the November 7, 2013 Board meeting. ... Following the Board meeting, staff will complete the National Policy Act [NEPA]/Section 404/408 Clean Water Act (CWA) integration process with the U.S. Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency (EPA). With concurrence with these agencies that the Preferred Alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA), staff will complete the Final EIR/EIS. At the conclusion of this environmental review process, the Authority Board will consider whether to certify the Final EIR/EIS and adopt necessary findings, and take action to approve the preferred north-south alignment alternative and station locations for this portion of the HST System; and it is further anticipated that the Federal Railroad Administration (FRA) will issue a Record of Decision (ROD) on the Final EIR/EIS, *followed by a decision by the Surface Transportation Board (STB).*”<sup>2</sup> (Emphasis ours)

The above demonstrates that the Authority’s staff knows and understands that a great deal must happen and be decided before the matter would be ripe for the Board to decide whether it should grant an exemption for the Authority’s Fresno to Bakersfield project section. The staff understands that it will be many months – likely far beyond February 14, 2014 - before we get to such a juncture.

What is the point of the Board compelling opponents to submit replies and analyses regarding the transportation effects of decisions that have not yet been made, and which will not be made for many months? What is the urgency? The imposition of any deadline prior to then would cause a needless waste of time and effort on the part of many parties, especially those whose parcels are located in the alignments that the Authority will eventually eliminate. Therefore, CCHSRA asks the Board to amend its decision by setting a deadline for replies that is some reasonable date after the Authority and FRA adopt their Final EIR/EIS, and after the final decisions regarding alignments and station locations are made.

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<sup>1</sup> California High-Speed Rail Authority, *Project Update Report to the California State Legislature*, November 15, 2013, p. 7 (11 pdf), [http://www.hsr.ca.gov/docs/about/legislative\\_affairs/SB\\_1029\\_Project\\_Update\\_Rpt\\_11\\_2013.pdf](http://www.hsr.ca.gov/docs/about/legislative_affairs/SB_1029_Project_Update_Rpt_11_2013.pdf).

<sup>2</sup> Authority, *Staff Recommendation: Preferred Alternative, Fresno to Bakersfield Section*, November, 2013, p. 1-1 (13 pdf), [http://www.hsr.ca.gov/docs/brdmeetings/2013/brdmtg\\_Item2\\_Attach\\_Fres\\_Baker\\_Staff\\_Recommend\\_Prefer\\_Alternative.pdf](http://www.hsr.ca.gov/docs/brdmeetings/2013/brdmtg_Item2_Attach_Fres_Baker_Staff_Recommend_Prefer_Alternative.pdf).

## **Insufficient Notice Will Be Given.**

CCHSRA filed a comment letter with the Board on May 7, 2013 in opposition to the Authority's March 27, 2013 Petition for Exemption for its Merced to Fresno section (FD 35724-0) as well as to the entire Merced to Bakersfield segment. A large number of other parties, including landowners affected by the project, expressed the same interest in the Authority's project by submitting replies to the Authority's Merced to Fresno Petition. However, our committee never received notice from the Authority or the Board of the filing of the Authority's most recent Petition.

The Authority never posted on its meeting agendas that it was considering filing this recent Petition for Exemption. Our organization monitors the Authority's agendas, and our members attend all of its Board meetings, but we never saw or heard that the Authority intended to take this action. Indeed, we find nothing in its agendas or minutes suggesting that any action was taken by the Authority's Board to authorize the filing of this Petition for Exemption.

We are gratified that the Board agreed in its December 20, 2013 decision that "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." Some of our members who filed replies in the Authority's March 27, 2013 Petition have just received notice from the Authority's attorneys, but said attorneys must have misunderstood the Board's decision, and sent them the Petitions that the Board filed on March 27, 2013 rather than the Petition the Authority filed on September 26, 2013. This needs to be corrected.

More importantly, however, the Board also decided that publication of its December 20 decision in the *Federal Register* would be the only other notice that would be given of these proceedings and of the deadline for filing replies.

The U. S. Supreme Court case of *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306, 314 (1950), holds that the 14<sup>th</sup> Amendment of the United States Constitution requires that all persons are entitled to receive notice that is "reasonably calculated" to inform them of proceedings that will affect them.

In recent years, the Authority has sent letters for various reasons to each and every landowner who owns parcels affected by the proposed Fresno to Bakersfield alignments. Thus, the Authority possesses the mailing addresses of all persons whose land may be affected by its Project. We do not believe these persons ordinarily read the *Federal Register*, so we fail to see how publication in the *Register* would meet the constitutional standard of "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency to present their objections." Upon applying these fundamental principles of due process to these specific circumstances, it leads one to the inescapable conclusion that the Board must further amend its decision by requiring the Authority to mail notice of these proceedings and of said deadline to *all* landowners in its proposed Fresno to Bakersfield alignments.

**Intent to Participate.**

Although CCHSRA has already done so, it again confirms that it intends to participate in the above-reference proceeding as a party of record, and requests copies of subsequent related pleadings, replies and decisions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Aaron Fukuda", is written over a light gray rectangular background.

Aaron Fukuda, Co-Chair of CCHSRA

**CERTIFICATE OF SERVICE**  
**STB Finance Docket No. 35724 (Sub-No. 1),**  
**California High-Speed Rail Authority -**

I hereby certify that on this 13<sup>th</sup> day of January, 2014, I have served a copy of this comment by first class mail, postage prepaid, addressed to the following:

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Executed on this 13<sup>th</sup> day of January, 2014 at Hanford, CA.

Aaron Fukuda, Co-Chair of CCHSRA