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Office of Proceedings
December 9, 2013
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December 9, 2013

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

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:

I filed a letter with your Surface Transportation Board (Board) on November 26, 2013 asking (1) for a reasonable period during which interested parties can file replies to the California High-Speed Rail Authority's (Authority) Petition for Exemption filed on September 26, 2013, and (2) that written notice of the filing of the Petition and of the deadline for filing replies be given to potentially interested parties.

I have read the Board's decision of December 3, 2013 in the above-referenced matter. While I am pleased that the Board decided against conditionally granting the California High-Speed Rail Authority's request for construction exemption authority prior to final review of the environmental issues, I am troubled by the following elements of the Board's decision:

Notice to Interested Parties.

The Board seems to have decided that publication of its December 3 decision in the *Federal Register* would be the only written notice given of the proceedings and of the deadline for filing replies. Yet, the landmark U. S. Supreme Court case of *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306 (1950), holds that, under the protections afforded by the 14th Amendment of the United States Constitution, all persons are entitled to receive notice that is "reasonably calculated" to inform them of proceedings that will affect them.

The people most likely to be affected by the Authority's proposed HST project are the farmers, homeowners and other landowners whose parcels lie within the project's proposed right-of-way alignments. Also, a large number of individuals and groups expressed interest in the Authority's project by submitting replies and opposition papers in response to the Authority's earlier Petition for Exemption for its Merced to Fresno HST section (FD 35724-0). Many of these submitters, myself included, expressly requested that they be given notice of future filings and proceedings in connection with the Authority's HST project.

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I seriously doubt that many of these individuals or groups read the *Federal Register* on a regular basis. In fact, I doubt that any of them read it at all. In contrast, the Authority possesses the names and addresses of each parcel owner in the various alternative alignments of the Fresno to Bakersfield section. The Board and the Authority also have the names and addresses of each party that filed replies in connection with the original Petition for Exemption. In light of the foregoing, how can publication in the *Register* constitute the better means of giving notice that is “reasonably calculated” to inform these people and groups of proceedings that will or can have a profound effect on them, their property, or their interests?

I suppose your Board is not aware of this, but the Authority never posted on its meeting agendas that it was considering filing the most recent Petition for Exemption. For this reason, those of us who monitor its agendas were unaware that the Authority intended to take this action. Indeed, there is nothing in its agendas or minutes that reveal that the Authority’s Board even authorized the filing of this Petition. This is not open, accountable behavior by a governmental agency, but rather the action of an agency that routinely lacks openness and integrity in its processes. We tire of it too often skulking and slinking about out of public sight and scrutiny, and it often seems to manage to either give no notice of many of its actions, or it gives the least notice possible.

In short, given the holding of the *Mullane* case, it seems that the Board should amend its decision to require the Authority to mail notice of these proceedings and of the deadline for filing replies to all landowners in its proposed Fresno to Bakersfield alignments, as well as to all those who filed replies and opposition papers in FD 35724-0. Otherwise, these parties will be effectively denied due process.

Deadline for Replies to Petition.

Because of the recent Federal government shutdown, the Board’s December 3 decision established December 24, 2013 as the deadline for accepting replies to the Petition. This is far too short a period. I see no urgency to justify such a deadline. 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.”¹ Moreover, the Authority confirmed on page 14 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.

What is the point of compelling people to submit replies and analyses regarding the transportation effects of decisions that have not yet been made, and which will not be made for a number of months? The Authority first needs to make its final decisions on alignments and

¹ California High-Speed Rail Authority’s November 15, 2013 Project Update Report to the California State Legislature, p. 2, http://www.hsr.ca.gov/about/legislative_affairs.

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station locations before interested parties can submit the best and most meaningful comments regarding the transportation issues created by these yet unknown decisions. The imposition of any deadline prior to then would be foolishly premature and would cause a needless waste of time and effort on the part of many, especially with respect to those parcels and people located in the alignments that the Authority will eventually rule out. Therefore, I ask that the Board amend its decision whereby the deadline for replies would be set as some reasonable time after the Authority and FRA adopt their Final EIR/EIS, and after the final decisions regarding alignments and station locations are made.

I look forward to your prompt reply.

Respectfully submitted,

Michael E. LaSalle

cc.

California High-Speed Rail Authority

Federal Railroad Administration

Congressman Jeff Denham

Congressman David Valadao

State Senator Andy Vidak