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Bakersfield, CA 93309-1336
May 7, 2013

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Cynthia T. Brown, Chief
Section of Administration
Surface Transportation Board
395 E Street, S.W., Room 100
Washington, DC 20024

RE: Finance Docket No. 35724, California High-Speed Rail Authority - Construction
Exemption - in Merced, Madera and Fresno Counties, California

1. PETITION FOR EXEMPTION
2. MOTION TO DISMISS PETITION FOR EXEMPTION OF CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Supplement to my Protest/Opposition Statement filed April 12, 2013

Dear Ms. Brown:

It is fitting that the Board has determined it has jurisdiction over the California high-speed rail project. Indication is that the Board will do a full and thorough review of the project as it should in its role of adjudicator and regulator of domestic railroad operations mandated by Congress. The Board should not be influenced by the Authority's request for expedited consideration or its "rush to construct" mentality, which is demonstrated by the Authority's aggressive management of the planning, environmental, and design stages of the project without a proper vetting of the issues. To the contrary, the Board should evaluate the project on its merits to determine whether it is consistent with the national rail transportation policy enumerated in 49 USC Section 10101(1)-(15). Upon review of the Authority's petition, the Board will find that the petition fails to meet the requirements of policy numbers (4), (5), (8), and (9) of Section 10101 for the reasons stated below.¹

¹ The California high-speed rail controversy stems largely from the manner in which the Authority is implementing the project in conflict with the November 2008 voter approved (52.62%) ballot measure. The ballot initiative was titled: Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, or Proposition 1 A. Along with arguments pro and con, the text of the law the voters approved is presented in a Supplemental Official Voter Information Guide that was mailed to voters by the California Secretary of State. Voters feel they were duped and polls now indicate as high as 60% of voters would disapprove of Prop 1A. The law enacted with the passage of Prop 1A added Chapter 20 (commencing with Section 2704) to Division 3 of the Streets and Highways Code.

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The Authority's Alignment Is Detrimental to the Public Health and Safety

A huge point of contention concerns the alignment the Authority selected. California Streets and Highways Code Section 2704.09(g) states:

In order to reduce impacts on communities and the environment, the alignment for the high-speed train system **shall follow existing transportation or utility corridors to the extent feasible** and shall be financially viable, as determined by the authority. [emphasis added]

Despite this mandate, the Authority's proposed alternative, portions of which do not follow existing transportation corridors, results in significant impacts to affected property owners that cannot be mitigated. For example, in rural Kings County, the alignment selected by the Authority is not in any of the transportation corridors. In fact, the alignment essentially divides Kings County down the middle. It further divides multi-generational family farms and renders many uneconomical to operate. In so doing, it destroys many acres of the richest, irreplaceable farmland in the nation. The Authority is reluctant to discuss mitigations with the Kings County Staff/Board of Supervisors because mitigation is limited short of selecting a totally different alignment than the alignment being pushed by the Authority.

The Authority's Plans Contain "A Great Deal of Ambiguity and Contradictions"

There are more problems with the selected alignment than Kings County family farmers. Where the proposed alignment is within a transportation corridor, like the corridors utilized by BNSF and Union Pacific Railroad Company (UP), the railroads have been unable to fully understand and evaluate the Authority's proposed plans.

Recently, in its April 16, 2013 letter to the Project Manager for Parsons Brinkerhoff, the contractor hired by the Authority to oversee the construction of the project, BNSF responded to the Authority's request that BNSF review various proposed passenger rail blended service plans by stating that the plans and materials submitted for review had ... "a great deal of ambiguity and contradictions".... BNSF continued by stating that the plans ... "appear to be inconsistent with materials or plans that the Authority has submitted in descriptions to the Surface Transportation Board for exemption, and what the Authority has submitted for environmental review. Thus there appears to be too much ambiguity at this time for a productive review of these plans."

This theme echoed concerns by UP in its October 12, 2011 letter commenting on the Fresno to Bakersfield Draft EIR/EIS. Specifically, UP identified the following concerns:

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- 1) Failure to Accurately and Consistently Address Union Pacific's Property Rights.
- 2) Failure to Acknowledge Acquisitions for Eminent Domain Purposes.
- 3) Failure to Evaluate Impacts of Alignments Adjacent to Union Pacific's Right of Way.
- 4) Failure to Address Construction Encroachments and Adjacency Impacts.
- 5) Failure to Evaluate Safety Risks and Mitigation.
- 6) The Authority's Plans for Grade-Separated Road Crossings May Not Preclude Future Grade Separation of Adjacent Union Pacific Tracks.
- 7) Failure to Ensure Sufficient Area for Required Freight Operational Activities.
- 8) Failure to Adequately Address Other Environmental Issues.

The BNSF and UP rights-of-way play an integral part in the project. Yet, the Authority has committed huge sums of money by sending land acquisition letters to property owners in the Fresno area even before the alignment issues are resolved with the railroads.

Thus, the Authority's "rush to construct" mentality puts the cart before the horse.

Additional Research Is Required to Establish that the I-5 Corridor Alternative is not a Better Alternative to the Authority's Preferred Alternative

There is little evidence that the I-5 corridor along the west side of the Valley has been adequately studied. Even without the necessary research, the I-5 corridor alternative appears to have merit. It is a transportation corridor as defined in Section 2704.09(g). It is removed from agricultural conflicts and problems with the UP and BNSF rights-of-way encountered with the current SR99 alignment. An I-5 alignment is a more direct route than SR99 between San Francisco and Los Angeles referred to as "Bay to Basin." The terrain along I-5 in the valley is relatively flat so most track would be at grade eliminating costly aerials through cities such as those proposed for Fresno and especially Bakersfield. Current planning calls for twelve miles of elevated track through Bakersfield reaching as high as ninety feet as it crosses the yet to be completed Westside Parkway. Without solid evidence, the Authority insists on implementing the SR99 alignment through the Central Valley despite it being costly and disruptive to the valley economy and quality of life.²

² The Board should also examine whether the Authority's proposed alignment will satisfy the financial requirements, such as estimated ridership and revenue, outlined in Streets and Highways Code Section 2704.08(c)(2)(J): "The planned passenger service by the authority in the corridor or usable segment thereof will not require a local, state, or federal operating subsidy."

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In conclusion, the Board must bear in mind that if this segment is ever completed, there still will be no high-speed rail in California. The taxpayers will have spent \$6 billion for approximately 130 miles of track without electrification for high-speed trains. Given the condition of state and federal budgets, there are no prospects for additional funding resulting in the worst possible outcome - a **stranded asset**.

Sincerely,


William C. Descary

Cc: Congressman Kevin McCarthy, 23rd District, CA
