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December 9, 2015

## VIA E-FILING

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

Re: Finance Docket No. 35977, Northwestern Pacific Railroad Company – Petition For Declaratory Order

Dear Ms. Brown:

The California High-Speed Rail Authority (HSRA) writes in support of the request by Northwestern Pacific Railroad Company (NWPCo) for the Board to issue expeditiously a declaratory order finding that the ICC Termination Act of 1995 (ICCTA) preempts application of the California Environmental Quality Act (CEQA) with respect to NWPCo's ongoing rail operations. As explained in NWPCo's petition (Petition), NWPCo operates pursuant to Board authorization and over railroad lines owned by public entities created under California law, which themselves are Board licensed carriers. As such, NWPCo's operations clearly fall under 49 U.S.C. §10501 and its preemptive provisions.

To be successful in an integrated interstate rail system, Board authorized railroads, whether public agency railroads or private railroads, need to have the certainty of uniform regulation and not be subject to a patchwork of state and local laws. Indeed, as the Board is aware, HSRA itself was involved in a similar declaratory order proceeding where HSRA's efforts to construct and operate a high-speed rail line were themselves facing CEQA lawsuits. In that proceeding, the Board held that CEQA was preempted because its application could interfere with the Board's exclusive jurisdiction over rail transportation. California High-Speed Rail Authority – Petition For Declaratory Order, FD 35861 (STB served Dec. 12, 2014). NWPCo's Petition involves a similar legal analysis and the result should be the same: a holding that

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ICCTA preempts application of CEQA (including efforts by third parties to sue NWPCo under CEQA).<sup>1</sup>

As requested by NWPCo, the Board should act expeditiously. While the Board has an obligation to review any comments received in reply to NWPCo's Petition, there should be no need to open a proceeding for the purpose of seeking further evidence and comment. The facts are straightforward and analogous to prior authorities finding CEQA to be preempted by ICCTA. Furthermore, given that briefing has been completed in Eel River,<sup>2</sup> a case that is directly on point to the issues raised in the Petition, is currently pending in the Supreme Court of California, an expeditious Board decision would provide guidance in that proceeding.

Respectfully submitted,



William A. Mullins  
Attorney for California High-Speed Rail Authority

cc: Parties of Record

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<sup>1</sup> As a public agency railroad, HSRA also respectfully urges the Board in this proceeding to reaffirm its finding in CHSRA that "the market participation doctrine does not apply in the context of a CEQA enforcement suit for a railroad project under [its] jurisdiction." Id. at 12.

<sup>2</sup> Friends of Eel River v. N. Coast R.R. Auth., 178 Cal. Rptr. 3d 752, (Cal Ct. App. 2014), appeal docketed, Friends of Eel River v. North Coast Rail Authority, California Supreme Court, Case No. S222472.