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

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

Response to Public Comments and Replies

Dear Ms. Brown,

Today I received via first class mail a Motion for Leave and a Response to Public Comments and Replies, authored by Counsel representing the California High Speed Rail Authority (CAHSRA). The documents were posted on the Surface Transportation Board website on May 17, 2013 (FD No. 35724). I was specifically named in the response document, so I feel compelled to respond to irregularities that I found in Counsel's document.

I believe that the irregularities found in this document underscore the need for the Surface Transportation Board (STB) to deny the exemption and to take the time to more thoroughly review and investigate the proposed project.

On page 7 of the response letter, Counsel states that "the Authority need not specifically establish in this exemption proceeding any public need for the Project". (5) This is where the irregularities in the document arise. I ask for your indulgence as I best try to explain my findings.

Counsel cited the case of Illinois Central RR Co: Construction and Operation Exemption (STB Finance Document No. 33877). Counsel also refers to a STB document served May 25, 2011 to defend their position. There is no such document that I can find associated on record in the online STB filings corresponding with this case. In fact, the case of Illinois Central RR noted above was a case decided in 2002.

A 2011 filing to a 2002 case appeared to be a little out of order, so I decided to look further. Upon reading the decisions on the above case, I found that there is no posted case decision cited by counsel specifically noting any general ruling on proof of public need. I suspected that perhaps counsel had given the incorrect date. I found a decision document dated OCTOBER 25, 2001 in the FD 33877 filings that did refer to the topic of public need. However, it referenced yet another case: Dakota, Minnesota and Eastern RR Corp. Construction in to the Powder River Basin (FD 33407) as the basis of determination or relevant rulings regarding public need. These cases cited by Counsel do not appear to confirm counsel's defense of their position.

In looking further to see if the May 25, 2001 date was accidentally mistyped, I found a letter submitted by Counsel Linda J. Morgan for another one of her client cases: Desert Xpress (FRA 2010-0098; FD 35544) A letter dated MARCH 25, 2011 in that filing once again references the Illinois Central RR. Case (No. 33877) but it makes no definite ruling on public need determinations.

Points to consider:

With regard to cited cases by Counsel regarding decisions of public need:

- a. The 2002 Illinois Central RR case (Docket No. 33877) - This was a project to construct a 3.2 mile railroad line to serve a plant owned by Exxon Mobil. This is hardly a fair comparison to the current High Speed Rail project. There would be no passenger element to the 3.2 mile segment.
- b. The Desert Xpress Project (DXE) (Docket No. 35544) - This is a privately funded project. DXE has neither sought nor accepted any public grants to support the project. The Surface Transportation Board was heavily involved in the review of this project at its earliest stages, having participated fully in the EIR/EIS process, providing comments and counsel. This allowed them to do a full and thorough investigation and review. Additionally, this project EIR reviewed the ENTIRE alignment. Its EIR was not presented in piecemeal segments. When the STB reviewed the project, their approval was based on complete information for the full length of the railroad alignment.

49 U. S. C. Section 10901 requires a party who intends to construct an additional railroad line and/or provide transportation by means of it to secure a certificate authorizing that action unless the Board finds that such activities are inconsistent with the public convenience and necessity.

Counsel claims that the case decisions cited above state that the CAHSRA need not prove that their project provides a public need. It appears that the CAHSRA's position is that there is an assumption that public need exists.

The public relies on the Surface Transportation Board to use their unique expertise to investigate this project thoroughly. I have read the submissions in this filing (FD 35724). It appears that the public's submissions have provided more than enough evidence to support the findings that:

1. There is no public need for this specific project.
2. The project fails to foster sound economic conditions in transportation.
3. It fails to ensure effective competition and coordination between rail carriers and other modes.
4. The project will be very financially detrimental to the State of California as well as to the Federal Government if allowed to proceed.

In 2008, the citizens of California voted in favor of Proposition 1A, which promised to build a High Speed Rail System 800 miles in length connecting San Francisco to San Diego with a connector to Sacramento for a cost of \$45 billion. There was a promised travel time from San Francisco to Los Angeles of 2 hours and 40 minutes without changing trains. Today's project is a blend of high speed and upgraded low speed rail systems approximately 480 miles in length that will only connect San Francisco to Los Angeles. Its estimated cost is at least \$68 billion. Thus far, Draft EIRs submitted for various segments of the CAHSR project have revealed that the number of adverse environmental impacts for many of the proposed alignments is far greater than what was originally anticipated. The project has deviated so significantly from what voters originally approved that numerous lawsuits have been filed. The most recent case is to be heard on May 31, 2013.

Cities and Counties have sent resolutions in opposition of the CAHSR project as currently proposed. More lawsuits are inevitable if certification of the final EIR documents for the Fresno to Bakersfield segment occurs. These facts should be seriously considered before any exemption is granted to the CAHSRA for construction.

Construction of a rail line between Madera and Fresno serves no additional public need in and of itself. As a stand-alone project, it relies on the assumption that funding will become available to construct the future sections of the CAHSR project. Numerous submissions to this filing reveal that there is no funding available to pay for additional contiguous alignments. At this time there is no private sector financial investment in this project.

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It is a fair observation to note that there is a strong possibility that this project may never be built in its entirety and that the Central Valley may indeed have a rail track that does not reach to the LA basin. Given that acknowledgement, there is no public need for this stand-alone project. The construction of the Madera to Fresno segment will not take cars off the road or reduce airport congestion. It will essentially be a new track for Amtrak. The San Joaquin Valley currently has an operating Amtrak service in close proximity to this proposed project segment. San Joaquin Valley airports have room for expansion and have the ability to well serve the Valley. This project is therefore a waste of public tax dollars.

Given that the CAHSR project is the largest, most complex and expensive rail project ever to come before the Board and that the full project EIR has not been updated since 2005, it would seem that there is a need for that update before considering approval of a piecemeal segment of the project. It has been reported that there has not been any decision as to the best way to construct a rail line over or through the Tehachapi Mountain Range due in part to geographical hurdles, including newly found earthquake faults. Additionally, the cost of such an endeavor has not yet been determined.

Construction of the Madera to Fresno segment of the CAHSR project will create needless adverse impacts to the general public if the full CAHSR project is not completed. I have heard the argument numerous times that even if the project is never completed, we will at least have a faster Amtrak rail line in the San Joaquin Valley. My response to that is that the construction phase alone will create adverse visual, air, noise and vibration environmental impacts that cannot be fully mitigated. Valley residents are also very concerned about the likelihood of disturbing infectious spores that cause coccidiomycosis, a disease commonly known as Valley Fever, during this needless construction. Construction will displace farms, businesses and homes. The lack of current funding would mean that any subsequent new track in the San Joaquin Valley would likely end in the vicinity somewhere north of Bakersfield, bypassing towns that are currently served on the Amtrak line. This proposed project simply does not promote a sound rail transportation system.

Ultimately, the public trust lies in the hands of the Surface Transportation Board to decide if the project is inconsistent with public necessity and if such a finding is made, to deny the exemption and require a full project application and extensive review. Additionally it is the duty of the STB to determine whether the proposed project is the most environmentally sound and if it actually fosters sound economic conditions in transportation. The evidence requires further review in order to determine the project's impact on other rail carriers and with other modes. While this process may take longer than the CHSRA desires, it is in the best interest of the public. The mere fact that the CAHSRA overlooked their requirement to file an application for this project reinforces the public's view that important details are being overlooked and/or dismissed when proper oversight is not in place.

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Given the above findings, I continue to urge the Board to take the following actions at this time:

1. Deny the CHSRA's petition for exemption;
2. Direct the CHSRA to apply for permission under section 10901 to construct the new proposed rail lines;
3. Conduct such hearings as are appropriate; and
4. If necessary, seek an injunction forbidding any construction until the Board has concluded its proceedings under Section 10901.

Respectfully submitted,



Carol Bender
13340 Smoke Creek Ave
Bakersfield, CA 93314