



## Holder Law Group

339 15<sup>th</sup> Street, Suite 202  
Oakland, CA 94612

holderecolaw.com

(510) 338-3759  
jason@holderecolaw.com

November 6, 2014

VIA E-FILING

236995

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

ENTERED  
Office of Proceedings  
November 6, 2014  
Part of  
Public Record

Re: **STB Finance Docket No. 35861, California High-Speed Rail Authority;  
Petition to Intervene and Joinder in Opposition to Petition for Declaratory  
Order**

Dear Ms. Brown:

On behalf of the Madera County Farm Bureau ("Farm Bureau"), we hereby join in opposition to Petitioner California High-Speed Rail Authority's Petition for Declaratory Order ("Petition"), submitted for filing on October 9, 2014. As an interested party, the Farm Bureau is e-Filing the enclosed Petition to Intervene and Joinder to Opposition to Petition for Declaratory Order as a reply to the Petition.

Thank you for receiving and considering this submission.

Very truly yours,

Jason W. Holder  
Attorneys for Madera County Farm Bureau

cc: See attached service list.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35861

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

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PETITION FOR DECLARATORY ORDER

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**MADERA COUNTY FARM BUREAU’S PETITION TO INTERVENE AND  
JOINDER IN OPPOSITION TO PETITION FOR DECLARATORY ORDER**

Pursuant to 49 C.F.R. § 1112.4, the Madera County Farm Bureau (“Farm Bureau”) submits this Petition to Intervene in Opposition to the Petition for Declaratory Order filed by the California High-Speed Rail Authority (“Authority”) on October 9, 2014.

The Interests of the Farm Bureau:

The Farm Bureau is a California nonprofit corporation whose mission includes protecting agricultural lands in Madera County and preserving agricultural heritage and the rural character of Madera County. The Farm Bureau includes approximately 1,200 members who reside in and/or engage in agricultural activities in Madera County. The interests of the Farm Bureau and its members have been and will continue to be adversely affected by the High-Speed Rail project (“Project”). Madera County will be heavily impacted by the Project because it is where the planned intersection between north-south and east-west alignments will converge, requiring the conversion and division of vast swaths of farmland to make way for the sweeping curved Project “wye” alignments.

From June 2102 to April 2013, the Farm Bureau was involved in state court litigation against the Authority based in part upon defective environmental review under California laws

for which the Authority seeks preemption under the Interstate Commerce Commission Termination Act (“ICCTA”). That state court litigation was resolved in April 2013 through a settlement agreement. However, the Farm Bureau and its members continue to actively participate in ongoing planning and environmental review for a portion of the Merced to Fresno section of the Project. The Authority Board deferred its decision concerning the Project’s alignment within this key portion of the Merced to Fresno section, explicitly making that decision subject to subsequent environmental review under the California Environmental Quality Act (“CEQA”).<sup>1</sup> The Farm Bureau and its members rely on the Authority’s continued compliance with CEQA for, *inter alia*, full mitigation of the Project’s significant impacts.

For several years, the Farm Bureau and its members have been actively participating in planning meetings and the environmental review process for the “Chowchilla wye” alignments being conducted by the Authority. When approving the neighboring Merced to Fresno section of the Project in May 2012, the Authority Board explicitly initiated its subsequent environmental review process for the “wye” alternative alignments subject to CEQA by adopting a resolution that states, in pertinent part:

Staff shall carry forward for further study and analysis all high-speed rail elements in the wye area (i.e., the box in quotation shown in Figure 2 of the Findings). Such analysis shall determine whether any of the current wye alternatives should be changed, augmented, or eliminated or additional wye alternatives considered. Staff shall return to the Board with recommendations, including coverage, in further CEQA documentation by July 31st, 2012.<sup>2</sup>

In January 2013, Authority staff confirmed it was preparing an environmental review document pursuant to both CEQA and NEPA.<sup>3</sup>

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<sup>1</sup> See Attachment 1: Resolution # HSRA 12-20, dated May 3, 2012 (without attachments), p. 2

<sup>2</sup> See *ibid.*

<sup>3</sup> See Authority Staff Memorandum to the Board, dated January 2013, available at [http://www.hsr.ca.gov/docs/brdmeetings/2013/brdmtg0113\\_item2\\_SJ\\_MercUpdateWye.pdf](http://www.hsr.ca.gov/docs/brdmeetings/2013/brdmtg0113_item2_SJ_MercUpdateWye.pdf); see also Authority Staff Presentation, dated January 23, 2013, available at: [http://www.hsr.ca.gov/docs/brdmeetings/2013/brdmtg0113\\_item2\\_SJ\\_MercWyePresent.pdf](http://www.hsr.ca.gov/docs/brdmeetings/2013/brdmtg0113_item2_SJ_MercWyePresent.pdf)

By seeking to eliminate the application of CEQA to the Fresno to Bakersfield section of the Project now (and indirectly seeking to exempt all of the Project from CEQA), at this late juncture, the Authority is in essence attempting fundamentally change the process all stakeholders have counted on and have been engaged in for years. Absent the requirements of CEQA, the Authority could approve sections of the Project without having to impose all feasible mitigation measures to reduce significant impacts. Such a result would exacerbate already substantial negative consequences of the Project to stakeholders throughout the state, including to the Farm Bureau and its members.

Like all other impacted stakeholders within California, the Farm Bureau and its members could be substantially harmed if the Surface Transportation Board (“Board”) rules that CEQA is preempted with respect to any or all sections of the Project by the ICCTA. The Farm Bureau is therefore opposed to the Petition.

Joinder in Opposition to Petition for Declaratory Order:

The Farm Bureau hereby joins in (1) the Opposition to Petition for Declaratory Order filed by the County of Kings, et al., petitioners in seven currently pending state court cases and in (2) the Opposition to Petition for Declaratory Order filed by Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, and California Rail Foundation (collectively, the “Oppositions”).

The Petition does not explain or address the potentially profound implications that the sought preemption determination by this Board could have for other Project sections and for the Project as a whole. Instead, it misleadingly characterizes the request for this determination by the Board narrowly, as simply a means to avoid the risk of an imminent injunction being granted in one of the pending state court CEQA actions. It does not admit that the Authority can then attempt to use that determination to persuade California courts that the entire Project is exempt

from CEQA. This would be an end-run around the published appellate decision *Town of Atherton et al. v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314. While eliminating the mandatory duty to mitigate significant impacts to the extent feasible may make the Project less expensive for the Authority to implement, it would also make the Project much more destructive to agricultural lands, communities, businesses, and infrastructure within and adjacent to the Project's alignment. For these reasons, and for the reasons expressed in the Oppositions, the Board should either deny the Petition or postpone any decision on the Petition until the California Supreme Court can render a final determination on whether the ICCTA preempts CEQA under the circumstances presented here.

The Farm Bureau also opposes the Authority's request for expedited review of its Petition and also requests that, if it does not deny the Petition outright, the Board allow full briefing on the issues raised by the Petition. As explained in the opposition, there is no imminent threat of an injunction being granted in any of the state court actions. Further, the Petition raises substantial and important policy issues that deserve the Board's full consideration now in light of the current facts and circumstances surrounding the statewide Project. The Farm Bureau submits that full briefing will assist the Board in its decision-making.

Conclusion:

For the foregoing reasons and for the reasons expressed in the Oppositions, the Farm Bureau requests that the Board deny the Petition. Alternatively, the Farm Bureau requests that the Board order briefing to develop the factual record and defer any decision on the Petition until after the California Supreme Court has an opportunity to decide the preemption issue as it pertains to the Project.

Verification:

I declare under penalty of perjury that the factual statements made in the foregoing Opposition to Petition for Declaratory Order are true and correct. Further, I certify that I am qualified and authorized to file this pleading on behalf of my client, the Farm Bureau.

Respectfully submitted this 6<sup>th</sup> day of November, 2014.



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Jason W. Holder  
Attorneys for Madera County Farm Bureau

Attachments:

1. Resolution # HSRA 12-20 (without attachments)



**Resolution # HSRA 12-20**

**Merced to Fresno Section High-Speed Train Project:**

**Adoption of CEQA Findings of Fact and Statement of Overriding Considerations**

**Adoption of Mitigation Monitoring and Reporting Program**

**Approval of the Hybrid Alternative North/South Alignment, Merced Downtown Station Location, and Downtown Fresno Station at the Mariposa Street Location**

**WHEREAS**, pursuant to the California High-Speed Rail Act, Public Utilities Code section 185000, et seq., the California High-Speed Rail Authority ("Authority") was created in 1996 to direct the development and implementation of intercity high-speed rail service that is fully integrated with the state's existing intercity rail and bus network.

**WHEREAS**, the Authority has chosen to use a tiered environmental review and decision making process to identify preferred alignments and station locations for the high-speed train system;

**WHEREAS**, the Authority and the Federal Railroad Administration (FRA) completed a first-tier, program EIR/EIS for the statewide high-speed train (HST) system in 2005 and approved general alignments and station locations for further study in second-tier, project-level environmental documents, but directed staff to prepare a separate first-tier, program EIR/EIS for the Bay Area to Central Valley route;

**WHEREAS**, the Authority and FRA completed a first-tier, Bay Area to Central Valley HST Final Program EIR/EIS in 2008, and the Authority completed a Partially Revised Final Program EIR in 2012;

**WHEREAS**, the Authority has now completed a second-tier Merced to Fresno Section Final Project EIR/EIS;

**WHEREAS**, the Authority has certified the Merced to Fresno Section Final Project EIR/EIS through Resolution 12-19;

**WHEREAS**, all legal prerequisites to the adoption of this Resolution have been fulfilled;

**NOW, THEREFORE, IT IS RESOLVED** by the California High-Speed Authority takes the following actions:

Section 1. Adoption of CEQA Findings of Fact. As the decision-making body for the High-Speed Train system, the Authority has reviewed and considered the information contained in the Merced to Fresno Final Project EIR/EIS and in the CEQA Findings of Fact attached hereto as Exhibit "A" as modified by Exhibit "A1" and supporting documentation. The Authority determines that the CEQA Finding of Fact contains a complete and accurate reporting of the environmental impacts and mitigation strategies associated with the Hybrid Alternative North/South Alignment, the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location. The Authority further finds that the CEQA Findings of Fact have been completed in compliance with CEQA and the State CEQA Guidelines. The Authority hereby approves and adopts the CEQA Findings of Fact attached hereto as Exhibit "A" as modified by Exhibit A1.

Section 2. Adoption of Statement of Overriding Considerations. The Authority hereby finds that the Statement of Overriding Considerations was completed in accordance with Public Resources Code section 21081 and State CEQA Guidelines Section 15093, subdivision (a), which states that CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. The Statement of Overriding Considerations is included in the Findings of Fact attached hereto as Exhibit "A" and sets forth those significant effects on the environment that are found to be unavoidable, but are acceptable due to the overriding concerns and benefits expected to result from implementing the Hybrid Alternative North/South Alignment, the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location as part of the statewide HST System. The Authority hereby approves and adopts the Statement of Overriding Considerations included in the Findings of Fact attached hereto as Exhibit "A".

Section 3. Adoption of Mitigation Monitoring and Reporting Program. Staff is directed and authorized to revise Exhibit B to be consistent with Exhibit A1. Pursuant to Public Resources Code section 21081.6, and State CEQA Guidelines Section 15091, subdivision (d), the Authority hereby adopts the Mitigation Monitoring and Reporting Program attached hereto as Exhibit "B" as modified by Exhibit A1.

Section 4. Approval of the Hybrid Alternative North/South Alignment, the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location as part of the statewide HST System. Based on and in consideration of all of the foregoing, the Authority hereby approves the Hybrid Alternative North/South Alignment (excepting all portions of the Merced Fresno project depicted within the rectangular box shown in Figure 2 in Exhibit A), the Downtown Merced Station Location, and the Downtown Fresno Station at the Mariposa Street Location, along with, and as conditioned by, the design practices and mitigation measures, which are described in the Findings of Fact attached hereto as Exhibit A and modified by Exhibit A1 and reflected in the Mitigation Monitoring and Reporting Program attached hereto as Exhibit B, and which shall be incorporated into and be a part of the approved project.

Section 5. Advance Funding for Construction Emissions Offsets. Regarding construction emissions offsets for criteria pollutants, the Authority shall fund upfront, from all available sources, offsets for the entire Merced Fresno segment, to the extent legally permissible and compliance with EPA governing rules.

Section 6. Next Steps. (A) The Authority hereby directs staff to file a Notice of Determination with the State Clearinghouse and to take any other necessary steps to implement the project; and (B) Staff shall carry forward for further study and analysis all high-speed rail elements in the wye area (i.e., the box in quotation shown in Figure 2 of the Findings). Such analysis shall determine whether any of the current wye alternatives should be changed, augmented, or eliminated or additional wye alternatives considered. Staff shall return to the Board with recommendations, including coverage, in further CEQA documentation by July 31st, 2012.

#### **CERTIFICATION**

The undersigned Chief Executive Officer, or his designee, of the California High-Speed Rail Authority does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California High-Speed Rail Authority held on May 3, 2012.

Dated: 05/03/2012



Thomas Fellenz  
Acting Chief Executive Officer

Vote: 5-0

Date: 5/03/12

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## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Madera County Farm Bureau's Joinder in Opposition to Petition for Declaratory Order by first-class mail, this 6th day of November 2014, on the following:

Sheys, Kevin M. Nossaman LLP 1666 K Street, N.W., Suite 500 Washington, DC 20006	Virginia Gennaro, City Attorney Andrew Heglund, Deputy City Attorney City of Bakersfield 1600 Truxtun Avenue, 14th Floor Bakersfield, CA 93301
Thomas Fellenz James Andrew California High-Speed Rail Authority 770 L Street, Suite 1160 Sacramento, CA 95814	Latham &: Watkins LLP James L. Arnone Benjamin J. Hanelin David B. Amerikaner 355 South Grand Avenue Los Angeles, CA. 90071-1560
Theresa A Goldner, County Counsel Charles F. Collins, Deputy County, County of Kern 1115 Truxtun Avenue, 4th Floor Bakersfield, CA 93301	Jamie T. Hall Julian K. Quattlebaum Channel Law Group, LLP 207 East Broadway, Suite 201 Long Beach, CA 90802-8824
Hogan Law APC Michael M. Hogan 225 Broadway, Suite 1900 San Diego, CA 91010	George F. Martin Borton Petrini, LLP 5060 California Avenue, 7th Floor Bakersfield, CA 93309
Chatten-Brown & Carstens LLP Douglas P. Carstens Josh Chatten-Brown Michelle N. Black 2200 Pacific Coast Highway, Suite 318 Hennosa Beach, CA 90254	Michelle Ouellette Howard B. Golds Sarah E. Owsowitz Best Best & Krieger U.P 3390 University Avenue, 5th Floor P .0. Box 1028 Riverside, CA 92502
County of Kings Colleen Carlson Kings County Counsel 1400 W. Lacy Boulevard, Building 4 Hanford, CA 93230	Madera County Farm Bureau Anja Raudabaugh, Executive Director 1102 Pine St. Madera, California 93636



Executed on November 6, 2014

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Jason W. Holder