

May 7, 2013

Surface Transportation Board
395 E. Street SW
Washington, DC 20423-0001
Re: Docket number is FD 35724
Comments about California High-Speed Rail Project

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To the Board members of the Surface Transportation Board:

I am a private citizen and have been monitoring the California High-Speed Rail Project for years now. I am also on the board of Community Coalition on High-Speed Rail, a community organization that has grown across the state of California. They will send a letter separately under the name of the board.

In addition I have written 167 articles on just this subject. I am hoping that someone who is seeking to understand the high-speed rail project in California will read this letter. In my opinion, the state of California and the state legislature, has failed to acknowledge the issues with the project because of politics, political ambition, legacy concerns and promises made to those who contributed heavily to past political campaigns. It's about the public not being heard and about violations of the people's Proposition IA that narrowly passed in 2008. Frankly it's more about the rule of law and confidence that I want to have in my government. I want to believe that everyone is required to follow the law.

I am asking the STB to carefully review the full project. Much of this is due to the premature and politically motivated routing decisions out of the public eye many years ago prior to the 2008 ballot measure and most recently the rush to get \$3.5 billion of federal funds when in fact no segment is ready for a "shovel ready" project as is the requirement for American Recovery and Reinvestment Act funds (ARRA) of 2009. It is a story about how not to run a project.

Frankly this is Solyndra magnified 100X. This will be a major embarrassment to the administration if it goes forward. I do not believe the administration would be supporting this project if they were aware of the deficiencies of the project. Certainly the President would care if the federal funds allocated for this project were in danger of being wasted. There is a very real chance that this project will die before it ever gets started.

The way to convert a dream into reality is a plan and the California Rail Authority does not have a good plan to make this happen.

There are federal laws and there are state laws and they are different. The state law in this case is far more restrictive. FRA documents acknowledge the state law and the lawsuits that are working against the project.

It is not about 29 miles in the Central Valley. It's about the waste of \$3½ billion federal dollars on a project that will not be completed and will not build high-speed rail. It's against both the letter and the spirit of the California laws and the spending of federal funds may be the most imprudent thing the FRA has ever done. The FRA may also be reaching beyond the guidance regulations for this project.

In the state of California, the people who have studied the project and who are opposed to this project are from all political backgrounds, in the Northern California, most are Democrats and in the Central Valley there are many more Republicans. The fact is whoever studies this project in earnest without the bias of politics which unfortunately plagues both Sacramento and Washington DC, comes to the same conclusion, this is a bad project. Unfortunately the Governor calls people who don't go along with his legacy dream project, declinists but in fact we are realists.

California State Law requirements:

In a nutshell the plan does not meet the A-K provisions of AB 3034, the enabling legislation for the Prop 1A High-Speed Rail Initiative. Here are key parts of the state law, called the A-K provisions, it begins with this sentence, and "The plan shall include, identify, or certify to **all of the following.**"

- A. The corridor, or usable segment thereof, in which the authority is proposing to invest bonds proceeds. **Answer: There is no corridor or usable segment being built now. The term ICS, initial construction segment, is a term that was invented for the purpose of spending both state and federal tax dollars.** In Dec 2, 2010, George Spanos then Deputy Attorney General stated the ICS is not a usable segment and yet that is what is required in this law. There is no smaller construction segment noted in the law. There is phasing of the project and it was planned to be done in usable segments, one at a time along the San Francisco to Los Angeles route. The concept of "on the way to compliance" for smaller sections than an IOS is not allowed. You either have the money to build the first legal segment or you don't.
- B. A description of the expected terms and conditions associated with any lease agreement or franchise agreement proposed to be entered into by the authority and any other party for the construction or operation of passenger train service along the corridor or usable segment thereof. **Answer: There is no lease or franchise agreement because there is no private investment and no one can be sure of it and that was what the public was told, there would be**

private investment. Brazil has tried three times to get private investment for their high-speed rail line and there have been no takers. Where will we get \$25 billion to complete the IOS south and then the Authority says we'll get someone who'll be interested. We have no assurances of that.

- C. The estimated full cost of constructing the corridor or usable segment thereof including an estimate of cost escalation during the construction and appropriate reserves for contingencies. **Answer: There hasn't been one bid awarded for the first tiny section, the C-1 alignment in the ICS, and there are 4 other segments that make up the ICS that do not have completed bids therefore no accurate estimate of cost can be accomplished at this time not anything the Authority would have would be early estimates not one you would bet \$8 billion dollars on.** Even when professional estimates are done, they are usually wrong as we have seen on the Bay Bridge and the Big Dig in Boston.
- D. The sources of all funds to be invested in the corridor or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means. **Answer: There are no funds to complete the first usable segment from Merced to the San Fernando Valley. In fact Chairman Dan Richard said at a Senate High-Speed Rail Meeting said it is highly unlikely we'll get federal grants.** He said at the Senate High-Speed Rail Meeting on February 26th that there "wasn't going to be a silver bullet" [in regard to finding capital] "only a series of 10% solutions." He also said the Federal model was changing from direct grants to one of a financing model.
- E. The projected ridership and operating revenue estimate based on projected high-speed passenger train operations on the corridor or usable segment. **Answer: The authority may have projections for the IOS south but that is not what is being constructed. The ICS cannot operate with financial independence since it doesn't have the ridership necessary. Chairman Dan Richard at the Mountain View Joint Senate Meeting on High-Speed Rail- acknowledged this on March 13, 2012.**
- F. All known or foreseeable risks associated with the construction and operation of high-speed passenger train service along the corridor or usable segment thereof and the process and actions the authority will undertake to manage those risks. **Answer: Since the EIR is not yet complete for both EIR's and inadequate mitigation has been estimated, it is impossible to tell if the authority can meet this standard. Going downhill at 220 mph in the Central Valley as proposed under the authority's memo in which they attempted to prove they could make proper travel times, seems pretty risky and casts major doubts if the system will be safe or reliable as promised in Prop 1A.**

- G. Construction of the corridor or usable segment thereof can be completed as proposed in the plan. **Answer: In the Initiative and AB 3034 there is a requirement for a four track fully grade separated track capable of 5 minute headways and it was outlined but in the April 2012 business plan these provisions cannot be met. The Program Level EiR for the Bay Area to Central Valley corridor was approved with a four-track system, yet that is not what is being proposed so it cannot be achieved.**
- H. The corridor or usable segment thereof would be suitable and ready for high-speed train operation. **Answer: The answer is simply no. The track will not be electrified, there will be on positive train control, it will not have a maintenance facility constructed and there will be no high-speed trains.**
- I. One or more passenger service providers can begin using the tracks or stations for passenger train service. **Answer: The intent here was that the track would be ready for high-speed rail service first and while waiting to connect all the corridors, which was originally estimated back in 2009 to be within a one year time period, other trains could use the tracks. So while the Amtrak service could begin using the tracks, the authority fails this condition because the track is not high-speed rail ready. The Amtrak diesel trains are also heavier and experts say with longer use, their trains could actually damage the tracks.**
- 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. **Answer: There is no proof of this and every reason to believe there will be a lifelong subsidy. The travel times will not be met; the ridership will be even further diminished. The original planning was for 10 trains per hour and in the latest plan they are down to 3 or 4 trains per commuter hour. Compared to overseas high-speed operating expenses, the plan's costs are grossly underestimated which leads one to believe that the state and its citizens will be on the hook forever.**
- K. The authority has completed all necessary project level environmental clearances necessary to proceed to construction. **Answer: The Authority has not completed even the ICS environmental clearance and there are virtually no permits cleared for the Initial Construction Section (ICS), first estimated of approximately 130 miles, let alone the required IOS South, which is required. There is a big issue with the Chowchilla Wye and if it will be environmentally linked to the Merced to Fresno section.**

Prop 1A Lawsuit:

There is a suit that has been filed and will be heard May 31st, which is more than adequate time for the sale of bonds if that suit is unsuccessful. This suit points out

several reasons why the high-speed rail project should not be allowed to use state matching funds. Former Chairman Quentin Kopp also does not believe that the project is in compliance with the laws and wrote a declaration for the County of Kings/John Tos and Aaron Fukuda suit explaining just that.

The Prop 1A initiative was passed by the people with stringent guidelines in it to protect those who voted for the initiative as well as those who did not. In the state of California, the legislators and the governor may not tamper with the conditions that the initiative passed and it's in the state constitution. This project was to be constructed with private funds, federal funds and about 9 billion in state bond funds. Unlike other railroads in the US, it cannot operate with a subsidy paid by the state; it is strictly prohibited in the ballot measure.

No money on the horizon:

Despite the fact of initiative law violations, the legislature voted to allow the expenditure of state and federal dollars but that doesn't mean that it is a legal expenditure of money and that is why there is a civil suit filed. It is very risky for both federal grants and state bond funds because there is no money even in the most distant horizon for even the first Initial Operating Segment from Merced to the San Fernando Valley. There is no private industry ready to step in and take up the slack.

It doesn't matter that the FRA oked a duplicative system of Amtrak using the tracks on a temporary basis what's called the "independent utility" in case high-speed rail is not built. The state law has no such provision. The legislature was authorized to vote appropriations for high-speed rail not for conventional rail. Even the funding plan that the High-Speed Rail Authority submitted to our state legislature doesn't follow the law. They were not supposed to present the funding plan until all environmental work was completed. They submitted that in 2011 and to date May 2013, it is still not complete. This another clear point made in the Prop 1A Tos/Fukuda lawsuit.

The entire first leg of the system is actually San Francisco to Los Angeles and according to state law is supposed to be finished by 2017. The first legally described usable segment which is Merced to the San Fernando Valley won't be ready for a minimum of 10 years and that is only if the additional \$25 billion is found. This project has the enormous probability of being abandoned with a set of nearly useless tracks in the Central Valley. This is a total waste of both California's and the United States taxpayers' dollars.

Authority Chairman Richard testified at the Senate High-Speed Rail Meeting on February 26th that there "wasn't going to be a silver bullet" [in regard to finding capital] "only a series of 10% solutions." He also said the Federal model was changing from

direct grants to one of a financing model. However we expected another \$40 billion in federal grants- how we will make up this gap? Where does that leave the state?

FRA lends money to California early:

The FRA has made arrangements to “lend” the state of California money to begin the project until the bonds are sold April 2014 or sooner. In a meeting on March 18, 2013, Chairman of the Authority Dan Richard admitted the Treasurer would most likely not sell the bonds until the lawsuits are settled. He admits, “Basically we’ve worked out an arrangement with the federal government money so that their money is flowing first which gives us even more flexibility. That’s one of the other things we’ve done to meet these great challenges.” (I have this meeting in personal transcription format and on audiotape)

The first group of money the FRA is lending the Authority is just under \$1 billion and is primarily for the purchase of properties along the first planned route. The second group of money primarily for construction and the realignment of Hwy 99, is agreed to be advanced, but must be approved ahead of time and with FRA permission. Part 2 is approximately \$1.6 billion. This is what I assume is an interest free loan without any match from California and before the bonds are sold.

This is planned in the Dec 2012 FRA funding agreement but not yet confirmed as being spent by the Authority. They refuse to answer these questions. But this is what the FRA is planning, despite the fact that all environmental planning is not complete, permits are lacking, railroad final agreements are not in place, properties not bought and a strong civil lawsuit filed for Prop 1A violations, scheduled to be heard May 31, 2013.

Another note of interest is ex-undersecretary of the FRA, Roy Kientz who offered that the California project could not spend the federal money first without their promised match has left the FRA and is now employed as a consultant for Parson Brinckerhoff, who is the prime consultant group in charge of the California project. I do not have confirmation if he is working on the California project.

What was the vision?

The way this was supposed to work was clearly outlined by then Chairman of the Senate Transportation Committee, Senator Alan Lowenthal in December 2007:

“This farsighted transportation project, however, is not being developed as a conventional public works project to be built with pay as you go funding, or by relying on

public debt financing. Instead, the Authority is offering California's voters a business proposition. Should the voters approve the \$9.95 billion measure on November's ballot, the Authority is anticipating using the bond revenues and future federal funds to attract a substantial amount of private capital. The Authority's underlying assumption is that the demand for high-speed rail in California is so strong that it will attract a private consortium with the resources to design, construct, finance, and operate the high-speed project under the terms of a long term franchise."

What you have before you is not the program Senator Lowenthal envisioned. As high-speed rail advocate Quentin Kopp said, the blended program has been bastardized. The approach the rail authority is taking is a blended system, loosely described as sharing existing rail infrastructure because they don't have the money to do dedicated tracks.

It is quite odd that when the FRA was examining corridors to invest in, they rejected the idea of using the electrification of Caltrain for the independent utility for the project because it was not in logical order of engineering practices. This was the segment between San Francisco and San Jose. It also was not intercity passenger rail, it was commuter train. This is part of what, ex-chairman Quentin Kopp vehemently objects to. This accommodation was part of a political deal to get the votes for the appropriation and win the hearts and minds of the Independent Peer Review group. In addition to the Central Valley money, more state funds with matching local funds are being used to electrify Caltrain in Northern California with reserves for Southern California if they have projects they deem legal for high-speed rail. The Caltrain corridor is not using federal funds allocated for high-speed rail, it's using a combination of state bond funds exclusively allocated for high-speed rail, some connectivity funds in the bond measure and matching local funds.

US Inspector General's Audit Report:

The US Inspector General said in their report on the FRA's spending of High-Speed Rail Grant money, that while the state of California has completed the required stakeholder agreements (not true as I will explain later) but warned that "the external peer reviewers expressed doubts that California could meet ARRA's 2017 deadline in order to receive reimbursements." This was published November 1, 2012 and is found on page 7 of audit report CR-2013-007.

But you see it's actually worse than that, what was stated in the Inspector General's report appears not to be true because there is absolutely no agreement with the BNSF Rail line, a key stakeholder in the central valley. In a letter dated April 16, 2013, they say, "BNSF has not agreed to or acquiesced in any proposed or potential alignment or change in service in the San Joaquin Valley involving our railroad, whether on, near or

adjacent to our current right of way or which could affect current or future rail service on our line, or could affect access to our line by present or future freight customers.”

The Senators who knew the most voted no:

In July 2012 when it came time to vote for the first appropriation the Senators who knew the most voted no. The doors in the chambers in the Senate were locked during the vote and with not one vote to spare, the appropriation vote just passed.

In Senator Mark DeSaulnier’s speech, he took a risk and declined to vote yes for this project. He said, “My experience and my prospective says this is wrong way and the wrong place to begin to implement this vision.”

He outlined real issues such as the state is more than 300% underfunded for the upkeep and maintenance of current infrastructure and he acknowledged they cut \$8 billion in human services, just the amount the Authority was seeking from the legislature to begin the rail project.

Senator Simitian voted no. Just one part of his eloquent speech he said this:

“We could talk about the fact that the administration has already acknowledged that it wants CEQA exemptions or exceptions or modifications as the project goes through the state, providing presumably less protection for people, businesses, homes, farms and open space. We could talk about the fact that this isn’t just a handful of critics in the legislature. The Legislative Analyst’s Office, the Peer Review Group, the independent Inspector General, the State Auditor, and the Institute for Transportation Studies at [University of California] at Berkeley have all raised significant concerns. And even looking at this newly revised plan, the Legislative Analyst’s Office said the risk is too great and recommends against proceeding with the plan.” Simitian continues he must vote no since “this is the wrong plan at the wrong time and in the wrong place. “

Senator Alan Lowenthal voted no.

“I’ve challenged the fact that many decisions are being made about routes and where we spend the money, not based upon the best financial and ridership data that’s available but on political decisions in terms of who wants projects to start in their area, what I consider self interest trumping communities of interest.”

Timing wise, the Authority must complete the ICS by the spring of 2017 in order to allow the state reimbursed for the federal funds (ARRA) and to take full advantage of all the grant funding. They are supposed to have the last of the bills in within six months of the end date of the deadline, which I understand is September 30, 2017. If the project is not on time, certainly at minimum the construction dollars not expended by the required time period will be forfeited and the state cannot spend what has not been matched.

The project will then will grind to a screeching halt until money at some time in the future can be invested in the project.

While there are not current environmental challenges filed against the Authority in the Central Valley, that will soon not be the case when the environmental work is certified for the project level EIR from Fresno to Bakersfield and that is another small part of the ICS (Initial construction section) of 130 miles, which the Authority says, they are going to build. So the entire ICS is will not be without environmental issue and shouldn't the entire 130 miles within the central valley be cleared in order to start anything? Actually the entire IOS to the San Fernando Valley should be environmentally cleared, permits issued and money in the bank before the project is started per Assembly Bill 3034.

The feds also have warned that the Authority must keep them abreast of lawsuits and there are several out there and the newest challenge of Prop 1A certainly troubling to them.

In the end it will be your call, to examine the facts and vote your conscience, hopefully without the undue influence of politics, just like the senators who knew the most about this project did. They all voted no. I will end with what Senator Simitian ended with on July 6, 2012 and hope you'll take his advice. "The only conclusion I can come to today is that this is the wrong plan in the wrong place at the wrong time. And I will be a "no" vote.

Please do the right thing for the federal government, the state of California and for the citizens of this country. The High-Speed Rail Authority is not ready to begin construction in the summer. It has many problems including no properties purchased or remediation plans in place, no solid railroad agreements in place and without the settlement of lawsuits in process and those to come concerning the first segment. This is the high-speed rail authority's MO is to rush everyone who comes near the project because they don't want a careful study of the program.

At a State Senate Budget Sub-committee meeting in April 2011, after HSR board member Rod Diridon reminded Senator Simitian that the Authority didn't have a minute to lose, Simitian answered.

He said he appreciated the sense of urgency about the possibility of losing federal funds but "it cannot be an excuse for failure to fully perform or not provide information. "I worry that folks think they can hustle us along by using whatever the deadline is handy for that purpose. It is my judgment, it is more important to get it done right, than to be timely and wrong. I understand the dollars are significant but they pale in comparison to the tens of billions of dollars that could be misspent if we make bad decisions."

You are getting the stimulus funds hustle and oh by the way in that same meeting, Diridon said that all environmental work would be completed by September 2011 and it's yet to be completed. What has been done has been poorly done because of the rush to spend shovel ready stimulus dollars and not a shovel or in fact a tablespoon of dirt has been lifted.

Please take a careful look at this project a lot of federal and state money is on the line and not one private investor.

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