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The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room 100
Washington, DC 20423-0001

Subject: **Request to Deny FD No. 35724 and Require Full Construction Permit with Conditions**

Dear Ms. Brown and Surface Transportation Board Members,

The California High Speed Rail Authority (Authority) has requested an expedited review from the Surface Transportation Board via Finance Docket No. 35724, California High-Speed Rail Authority - Construction Exemption in Merced, Madera and Fresno Counties, California (Petition). With several years of involvement in the California High Speed Rail Project (HSR Project) the denial of the exemption can simply be based upon the far reaching impacts that the proposed HSR Project will have on existing transportation systems including Amtrak and freight rail, and the long standing history that the Authority has at misleading the public. This letter is intended to provide some clarity such that the Surface Transportation Board (STB) can ensure that this project is no longer run in a mismanaged manner and that the public interest in transportation, freight movement and private property rights are upheld.

Expedited Review

The Authority has requested that their petition be expedited to allow for the award of contracts to contractors bidding on the project. This request is not in the best interest of the nation nor the residents of California. The lack of detail and ability to seek the appropriate clearances for this project should not hinder the appropriate level of investigation and permitting required for the largest and most expensive infrastructure project in the nation. The amount of information required to make a proper assessment of this project just for the exemption request covers

approximately 15+ years of work on behalf of the Authority and volumes of data. The lack of planning on behalf of the Authority to consult with the STB should not come at the expense of the due process the STB requires to make a comprehensive investigation and thoughtful findings.

The amount of information the Authority has produces is monumental, much of it produced in a disjointed and confusing manner. For instance, the jurisdiction of the STB over the HSR Project can be directly related to the impact of the HSR Project on the Amtrak system in California.

This involves Federal requirements set forth by the Federal Railroad Administration, requirements detailed in the acquisition of Federal Stimulus Funds and a complicated maneuvering of Authority staff to remove the authority over Amtrak from the California Department of Transportation (CALTRANS) and create a Amtrak Joint Powers Authority (Amtrak JPA) that is now by law subservient to the California High Speed Rail Business Plan. The documentation, hearings and complicated relationships tangled in this singular issue involve thousands of pages of documents and many intricate agreements and deals.

A reasonable, methodical review of the HSR Project will highlight the glaring shortcomings that the project presents including the significant failures to address individual landowners and the environment. As one of the largest infrastructure projects in the history of the nation and with an arsenal of hundreds of consultants working for this project on a daily basis, it would make reasonable sense that landowners located within the alignment would be contacted personally to be made aware of the potential loss of land. What has instead been touted as outreach are small postcards with schematic maps (of which there is no discernible way to discriminate if your home or land is in the alignment) and "right to enter" letters sent to landowners to access property for survey and biological investigations. What has happened in areas such as the Kings County, California is the formation of small grassroots organizations like the Citizens for California High Speed Rail Accountability (CCHSRA)¹, which serves to provide an outreach to landowners who have concerns and questions. Personally, I have had to talk to hundreds of landowners to answer questions and allay fears, a job which should be undertaken by the Authority. However, there has been an earnest attempt by the Authority, its staff and consultants to NOT properly notify

¹ CCHSRA was formed in 2011 by community members in Kings County. I serve as a Co-Chairman of the group. There are approximately 30 active members that meet weekly, however the overall representation includes approximately 300+ landowners in Kings County.

and address concerns of citizens. A request made approximately 4 weeks prior to this letter was made to the Authority to provide maps of a newly formed alignment in Kings County. The specific request was for the right-of-way maps showing details of the alignment, overpasses and trenched options. To date I have not received these maps and continue to be told they are working on them. Meanwhile, landowners who had no idea their land was in an alignment or within the path of the new alignment worry and build anxiety without answers. A thoughtful review of this project will highlight these shortcomings along with others such as the failure to address environmental concerns.

Environmental review of this project has also been an exercise in circumventing responsibilities and producing barely legal documents. The Authority processed the Programmatic EIR/EIS for this project in 2005 to a limited audience, and for those who were noticed the document was challenged. For our communities in Kings County, there was no notice of preparation and no contact made to notify residents of the project being proposed. Counties, cities and news publications to the north of Kings County and the south were all properly notified. Fast forward to the Project-level EIR/EIS in 2011 and the Authority conducted surveys and investigations with "drive-by" assessments. These were conducted without landowner notifications and the document reflects the lack of knowledge and understanding of our environmental concerns. I have personally provided over 100 pages of environmental concerns and failures to the Authority and they can be provided to the STB upon request. Some impacts that have been overlooked include:

- Failure to analyze the project as a singular system and appropriate level of compounded impacts. They have indicated that as segments the impacts may be minimal, however if additive to other sections, the impacts may become significant.
- Appropriate level of biological identification of species and impacts.
- Failure to properly address air quality concerns during and after construction.
- Failure to provide the appropriate detail regarding safety concerns related to groundwater overdraft and subsidence.
- Failure to identify the isolation impacts created by a completely grade-separated track.
- Failure to identify increase traffic due to the grade-separated tracks and the subsequent impacts to the environments such as air quality.

- Failure to identify the environmental impacts due to the potential use of Amtrak on the new high-speed rail lines.

These items are a sample of the environmental concerns that were overlooked by the Authority in their rush to begin this project. My full environmental comments are not included with this letter due the volume of comments (over 150 pages of comments) however can be provided upon request.

All of the planning, design, environmental work and public outreach that has been conducted by the Authority must be examined by the STB to protect the Federal interest in the HSR Project. Such a review deserves a realistic and honest examination, one that would surly take longer than a few months. The request for an expedited review should be taken in the context of the history of the Authority and its past behavior. Releasing documents and making last minute decisions have left California unable to react or understand what the Authority is proposing or implementing. This tactic is again being employed with the STB and the tactics of the Authority should not come at the expense of the responsibilities and oversight of the STB.

STB Exemption Request

The Authority has requested an exemption under 49 U.S.C. § 10205 under the following arguments:

1. The Project will enhance competitive options.
2. The Project will provide passenger rail service and not freight service, therefore no shippers need protection.

Untested Blended Approach

The Authority intends, as indicted in the their Petition to achieve high speed rail service by combining services with local passenger rail service in the northern segments (San Jose to San Francisco) and in the southern areas (Los Angeles to Anaheim), which has often been called the "blended approach". This involves a very complicated and unanalyzed merging of the high speed rail service with conventional rail service. To date there has been no details as to the integration of high speed rail service, the operation of high speed rail service nor the

maintenance of high speed rail service with these existing passenger rail lines. Given the lack of description provided in the Petition, and the subsequent lack of detail provided to the public, the STB should be concerned with the impacts that this merging of existing passenger rail service and high speed rail service would be on the existing markets.

Of notable concern the STB should be provided with enough detail to ensure that:

- the existing level of passenger rail service can be maintained;
- the merging of current rail service can be achieved with high speed rail service;
- the prices of fares for existing riders is not impacted;
- the technology that will be implemented for high speed rail service complies with the existing passenger rail service;
- the merging of high speed rail service meets the requirement set forth by California voters in Proposition 1A²;
- the operation of conventional and high-speed rail service concurrently on one track is safe and reliable;
- and that the Authority ensures that these details are provided BEFORE the project is implemented.

Incomplete System Review

The Authority claims that the project that is seeking the exemption is a "dedicated high-speed passenger rail line between Merced, CA and Fresno, CA ".³ The Authority has a reputation in California for providing only information and descriptions that benefit the stance of the Authority. This often has lead to confusion and a misrepresentation of the facts, as is the case with their request for exemption for only the section of track from Merced to Fresno. This section of track is only a small portion of the overall project and also only represents an small set of track that is not intended to be electrified with the funds available. Nowhere within the description provided to the STB does the Authority indicate that the exemption being sought is for an unelectrified section of track. It is my firm belief that the STB should review this project

² Proposition 1A (AB3034) is the legislation set forth by California voters to approve general obligation bonds to fund a portion of the HSR Project. Several conditions were stipulated to ensure a viable and successful HSR Project. At this time, the proposed system fails to meet most of the requirements being set forth.

³ Petition for Exemption, Filed 03/27/2013, Page 2

as a system connecting San Francisco to Los Angeles with electrified service and travel times of 2 hours and 40 minutes for a fare of \$50, which is what the voters of California were promised. This system review includes a review and analysis of the environmental concerns for the system and not simply a small 29 miles of unelectrified track.

Amtrak Service Impacts

***"The segment will become operational by allowing Caltrans to operate expanded San Joaquin service between Bakersfield and Merced on the first IOS section"*⁴**

The STB has the authority over the impacts related to intercity railroad service, including Amtrak. In the case of HSR Project the Authority intends to uproot Amtrak service on the San Joaquins Service and place it on the proposed HSR Project tracks from Merced to Bakersfield, California. This has the potential to impact rail intersections with the freight rail in Merced and Bakersfield along with eliminating service to the communities of Hanford, Corcoran and Wasco, California. The City of Hanford alone represents a ticket ridership of approximately 187,000 riders per year⁵. For a community of 50,000 this represents one of the highest per capita ridership value to Amtrak in the United States. This fact is missing from the analysis provided in the Petition, which further emphasizes the necessity to provide further review and hearings to ensure that the STB has made a thorough and complete review of the high speed rail project in California.

The involvement of Amtrak with the California HSR Project was introduced simply to retain "independent utility" per Federal Railroad Administration (FRA) requirements to receive federal funding. At the onset many organizations challenged the ability of the Authority to manipulate Amtrak Service to accommodate requirements set forth to establish high-speed rail service (the Authority has powers over high-speed rail activities, not conventional rail). For approximately one year the Authority was silent on the issue and refused to provide a response or plan as to the ability to move Amtrak service to the newly constructed HSR tracks. In October 2011 an interesting Authority personnel change took place where the Director of Environmental Service

⁴ CHSRA Revised Business Plan, Page 2-14.

⁵ Amtrak Fact Sheet, Fiscal Year 2010, State of California, Page 1.

for the Authority, Dan Leavitt resigned from the Authority and took a position with the San Joaquin Regional Rail Commission, which oversees the Altamont Corridor Express. Another troubling appointment took place concurrently, which placed Stacy Mortenson, the Executive Director of the Altamont Corridor Express, on the Peer Review Panel, which oversees the California High Speed Rail Authority and the HSR Project.

Immediately upon these personnel changes (literally within days), Mr. Leavitt and Ms. Mortenson were found traveling up and down the State of California meeting with public agencies to establish the San Joaquin Railroad Joint Powers Authority, which would remove the operation of Amtrak from CALTRANS and place it within the authority of 11 counties within California. Mr. Leavitt and Ms. Mortenson falsely promoted the program as a way to gain local control over Amtrak and improve its service. The public challenged that this was a move to place Amtrak under the control of the Authority and the HSR Project, to which the duo denied any claims and aggressively pushed forward. In order for the JPA to be formed, legislation was required⁶. Several days before the legislation was brought to a legislative vote, the language was changed. Wording was added to the legislation requiring the San Joaquin Railroad JPA to be subservient to the CHSRA Revised Business Plan, which coincidentally called for the movement of Amtrak Service to the HSR tracks to meet FRA requirements.

Under the Passenger Rail Investment and Improvement Act of 2008, the STB has increased jurisdiction over passenger rail. Newly established metrics that have been set by Amtrak and the FRA have failed to be addressed by the Authority. Services provided by Amtrak at the current moment will be interrupted at a minimum and at maximum service will be lost to the communities of Hanford, Corcoran and Wasco. It is also anticipated that passenger rail service prices will be directly impacted. All of these details have not been addressed by the Authority, yet have the potential to impact existing rail service.

Impacts that have been raised and not addressed include:

⁶ California Assembly Bill 1779.

- Will the level of service to communities such as Hanford, Corcoran and Wasco be preserved? What guarantees to these communities have that the same level of service can be provided?
- With the construction of new tracks and placement of Amtrak on these new lines, who is responsible for operations and maintenance? Currently the operations and maintenance is based upon a shared track system. The ability to have multiple users and expertise in track maintenance allows for a sharing and efficiency in costs. If Amtrak is moved to the new line and must be responsible for the operation and maintenance cost, this could require either higher subsidies or higher ticket prices for passenger rail. This also impacts freight rail as the Burlington Northern Santa Fe tracks are shared with Amtrak. If operations and maintenance fee are removed from the shared track, rates will need to be adjusted in the freight system.
- To date, there has not been a discussion of moving Amtrak to the new lines and the impact that would be seen on the existing freight rail service. As trains move north and south along the new lines, the Authority plans to rejoin the freight rail service south of Corcoran and north of Madera. In oncoming and existing trains moving, the coordination of the system needs to be addressed.
- The HSR Businesses Plan uses Amtrak to meet its "Independent Utility" requirements and when and if they move towards high-speed rail service they provide no plans for Amtrak. Where will it go? How will it operate? Who will operate it?

These simple questions that address concerns of our existing passenger rail service and freight rail seem to be ignored by the Authority, however it is the goal and objective of the STB to ensure that these are both protected and operationally viable.

Protection of the Public Interest

The Authority states that the exemption being sought "will further the goals of the nation's rail transportation policy".⁷ The Authority fails to clarify that the exemption being sought for only the Merced to Fresno section add no value to the passenger rail system in California and has the

⁷ Petition for Exemption, Filed 03/27/2013, Page 2

potential to negatively impact freight and passenger rail service. What is being proposed and executed by the Authority has no benefit to the public interest.

As it currently stands the Authority only has identified \$6 billion of a project which is estimated to cost \$68 billion. The Authority investment plan has lofty and unrealistic goals to obtain the rest of the funds from the Federal Government, private industry and local dollars. The Federal government has clearly indicated that no further funds are forthcoming, the private industry is nowhere to be found, and many are still baffled as to what "local" dollars they are intending to access. Therefore, what the Authority is planning to build is an unelectrified, conventional set of tracks that extend from Avenue 17 to somewhere around Shafter, California (Authority is vague about where the first tracks will end due to the lack of funding). There will be no electrification of tracks, no high-speed train sets, no high-speed train systems controls and most importantly no high-speed rail service. What has been argued and proven is this is not in the public's interest nor does it improve passenger rail service in the nation.

Conclusion

As can be established, the STB has authority over the California High Speed Rail Project to provide oversight that would be necessary to protect the nation's interest in rail service, including freight and passenger rail service. Although the Authority is seeking exemption at this time for only a small section of unelectrified and unusable high speed rail track, it would be critical for the STB to establish early the terms and conditions for which the California High Speed Rail Authority can construct and operate this project. Had the Authority recognized their responsibility and applied for this permit in a timely fashion, the sudden push for an expedited review would have been undertaken.

As a landowner in California and one who has kept intimately involved in the project for over 2 years, I appreciate your willingness to take these comments and include them in the process. At this juncture in the California High Speed Rail Project, it is imperative that the STB take the appropriate time to review and analyze the impacts associated with the plans being put forth by the California High Speed Rail Authority. The STB must ensure that the appropriate conditions

and safety measures are put in place to ensure that the Authority and the HSR Project do not directly or indirectly impact the passenger or freight rail service in the nation.

I request that the Surface Transportation Board deny the California high Speed Rail Authority the requests made under Finance Docket No. 35724 and hold jurisdictional hearings over the project in California, such that the public most impacted by this project can have access to the hearing and provide input.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aaron Fukuda", with a long horizontal flourish extending to the right.

Aaron Fukuda