

Robert M. Dowd*
Robert W. Gin*
Randy L. Edwards
Jim D. Lee
Jeffrey L. Levinson*
Raymond L. Carlson
Ty N. Mizole*
Michael R. Johnson*
Robin M. Hall
Mario U. Zamora
Laura A. Wolfe



Griswold LaSalle
Cobb Dowd & Gin L.L.P.

G·L·C·D·G

ATTORNEYS

A California Limited Liability Partnership including Professional Corporations

111 E. SEVENTH STREET
HANFORD, CA 93230

Telephone: (559) 584-6656
www.griswoldlasalle.com

Lyman D. Griswold
(1914-2000)

Michael E. LaSalle
(Retired)

Steven W. Cobb
(1947-1993)

*a Professional Corporation

BY ELECTRONIC FILING

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

234036
ENTERED
Office of Proceedings
April 8, 2013
Part of
Public Record

Re: Notice of Intent of Kings County Water District to Participate in California High Speed Rail Authority, Finance Docket No. 357233, together with accompanying Request for Extension of Time to File Its Protest

Dear Ms. Brown:

This letter constitutes the notice of intent of Kings County Water District, a California county water district formed and existing under California Water Code §§ 30000 and located in Kings County, California, to participate in the above-referenced proceeding.

The District expects to file a protest to the Petition for Exemption and Motion to Dismiss filed by the California High-Speed Rail Authority ("CHSRA" or "Authority") on March 27, 2013. The District only became aware of the Authority's filing during the week of April 1. At its regular monthly meeting on April 4, 2013, the District's Board of Directors authorized the District's participation in the matter pending before the STB, and for the District to oppose the attempt by the Authority to exempt itself from the jurisdiction of the Board.

Submitted for filing with this notice of intent is the District's Request for Extension of Time to File Its Protest to the CHSRA Petition for Exemption and Motion to Dismiss, *for which expedited consideration is requested* due to the looming 20-day time deadline to respond to the Petition and Motion to Dismiss that will soon expire.

This Request for Extension of Time is timely under 49 C.F.R. § 1104.7(a). Good cause for the extension under 49 C.F.R. § 1104.7(b) exists for the reasons set forth below and in the Request enclosed herewith.

Pursuant to 49 C.F.R. § 1002.2(e)(1), filing fees are waived for an application or other proceeding which is filed by a federal government agency, or a state or local government entity of which the District is one.

The relief requested by the Authority would exempt a controversial, huge transportation project from STB scrutiny. Yet the only organizations who are likely to present facts and considerations different from the Applicant are and certain local government entities like Kings County Water District and non-profit citizens' groups. Our ability to participate as parties would assist the STB is developing all the facts needed to reach a proper determination on the merits.

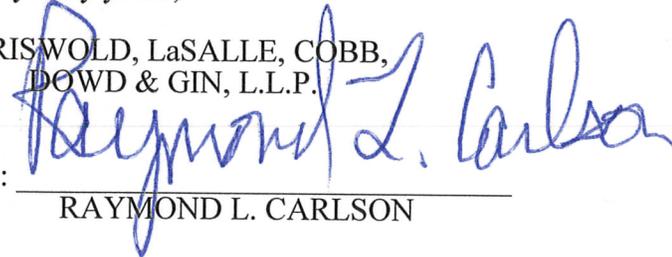
The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
April 8, 2013
Page 2

Thank you for your consideration.

Very truly yours,

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.

By:



RAYMOND L. CARLSON

cc: Don Mills

cc: via e-mail
Linda J. Morgan
Kevin M. Sheys
Peter W. Denton
Thomas C. Fellenz

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35724
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
– CONSTRUCTION EXEMPTION –
IN MERCED, MADERA AND FRESNO COUNTIES, CALIFORNIA

**REQUEST OF KINGS COUNTY WATER DISTRICT
FOR EXTENSION OF TIME TO REPLY TO
MOTION TO DISMISS PETITION AND PETITION FOR EXEMPTION OF
CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

RAYMOND L. CARLSON, CA BAR #138043
LAURA A. WOLFE, CA BAR #266751
GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.
111 EAST SEVENTH STREET
Hanford, California 93230
Telephone: (559) 584-6656
Facsimile: (559) 582-3106

EXEMPT FROM FILING FEE
PER 49 CFR § 1102.2(e)(1)

Counsel for Kings County Water District

DATED: April 8, 2013.

Kings County Water District hereby requests an extension of time within which to oppose the California High-Speed Rail Authority's ("CHSRA" or "Authority") Motion to Dismiss Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10901.

The District is a California County Water District formed in 1954 under the provisions of California Water Code §§ 30000 et seq. See Atchison etc. Ry. Co. v. Kings County Water District (1956) 47 Cal.2d 140, 143. The District consists of about 150,000 acres (234 mi²) of highly developed farmland in the northeast most portion of Kings County. Both "Hanford West" and "Hanford East" alternatives for the passage of the High-Speed Rail (HSR) in Kings County will pass through the lands within the District, causing lasting damage.

The Authority incorrectly states that its Petition pertains to the construction of a "dedicated intrastate high-speed passenger rail line between Merced, CA and Fresno, CA."

On March 27, 2013, the Authority filed (1) a PETITION FOR EXEMPTION under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901, and (2) a parallel MOTION TO DISMISS PETITION FOR EXEMPTION OF CALIFORNIA HIGH SPEED RAIL AUTHORITY. The Authority's Motion to Dismiss asserts that STB lacks jurisdiction over construction of its projected \$6 billion new rail line, asserting that this rail line is not "part of the interstate rail network" within the meaning of 49 U.S.C. § 10501(a)(2)(A). CHSRA concedes, as it must, that "The determination of whether an intrastate passenger rail service is part of the interstate rail network is a fact-specific determination."¹ The same is necessarily true regarding certain factors on which the STB must make a determination under 49 U.S.C. § 10502 on whether or not an exemption is necessary to carry out the transportation policy of 49 U.S.C. § 10101.²

¹CHSRA Motion to Dismiss, p. 6, quoting *All Aboard Florida*, STB Finance Docket No. 35680, at p. 3 (Dec. 21, 2012).

²*E.g.*, 49 U.S.C. § 10101 (4)-(5): "(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense; [and] (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;"

The Authority has been selective and limited in the information that it has chosen to place in the record. For example, the Authority carefully asserts that it has no *current* (i.e., not yet) contracts or arrangements for through ticketing or for use of its HST system for interstate passenger service. But the Authority has not disclosed plans it may have for any such arrangements, and when and how it intends to implement such plans--despite the fact that its April 2012 Revised Business Plan boasts of its “blended systems and blended operations, which are the *integration of high-speed trains with [Amtrak's] existing intercity [rail lines] and regional/commuter rail systems via coordinated infrastructure (the system) and scheduling, ticketing, and other means (operations).*”³ (emphasis added) Specifically, the April 2012 Revised Business Plan states:

“At all phases of development, [the Authority] seeks to use new and existing rail infrastructure more efficiently through coordinated delivery of services, *including interlining of trains from one system to another, as well as integrated scheduling to create seamless connections.* . . .

“Through collaborative planning and implementation, *the [Amtrak] San Joaquin rail service* (fifth busiest in the nation) *will be shifted to [run on the tracks of] the first construction segment upon its completion*, resulting in a 45-minute time savings; through complementary improvements, this will tie with [Amtrak's] ACE [Altamont Corridor Express] to provide new, expanded, and improved rail service throughout northern California, connecting the Central Valley with the San Francisco Bay Area and Sacramento region.”⁴ (emphasis added)

“*Planning for early interim service [by Amtrak] on the IOS [initial construction] segment is already underway, with the goal of commencing Amtrak operations as soon as possible after construction is complete in 2017.* The Authority is already [in April 2012] collaborating with its transportation partners to identify and address the technical and policy

³<http://www.cahighspeedrail.ca.gov/assets/0/152/431/1a6251d7-36ab-4fec-ba8c-00e266dadec7.pdf> p. 2-1.

⁴Id. at Exh. ES-1.

issues that would be associated with developing early service. Through this process, agreements will be worked out on a range of issues, including how and where the service would operate, how it would be integrated with other systems, and how to transition to revenue HSR service as the IOS is completed.”⁵ (emphasis added)

Thus, Amtrak's San Joaquin passenger rail service is, and will continue to be, part of the interstate rail network through, *inter alia*, its Sacramento connections with its California Zephyr and Coast Starlight interstate passenger services. The District should be allowed to develop the record to show that to be true when the Sacramento-bound Amtrak trains run on the Authority's tracks. Accordingly, the District anticipates it will work with other protestants in the initiation and conduct of discovery, including requests for production of documents, relating to the foregoing and similar CHSRA statements of integration with Amtrak and other passenger rail services. The purpose of such discovery will be to ascertain, in order to place in the record, relevant facts solely within the control of the CHSRA and its consultants that we believe would show that the facilities CHSRA proposes to construct will be “part of the general system of rail transportation and are related to the movement of passengers . . . in interstate commerce.”⁶ *DesertXpress Enterprises, LLC*, STB Finance Docket No. 34914, p. 9 (May 7, 2010).

Accordingly, the District requests that its time to file its response to the Authority's Petition for Exemption and accompanying Motion to Dismiss be extended for fifteen days and, provided that within that time it notifies the STB that it has initiated discovery requests to CHSRA, its time to respond be extended for an additional fifteen days from (a) its receipt of the requested discovery or (b) the denial of its timely motion to compel discovery, whichever occurs first.

⁵Id. at p. 2-14.

⁶The District plans participate with others to initiate similar discovery of CHSRA regarding the provisions of section 10101 (4)-(5), quoted in fn. 2, *supra*.

In consideration of this request, the STB must balance the Authority's desire for a quick resolution against the time reasonably required by prospective opponents to review statements made by the Authority which relate to the matters at issue in this proceeding, including, but not limited to the various versions of its Business Plan, transcripts of testimony of its officials in legislative hearings, its cooperative funding agreements with the Federal Railroad Administration, its Funding Plan, resolutions of its Board of Directors, its response to comments in EIR/EIS proceedings, staff reports to its Board of Directors, etc. All told, these constitute thousands of pages of documents. The 20-day time limit now in place is not adequate given the issues presented, the extensive documentary record, and the limited resources that most prospective opponents possess, including the District.

The STB should also take into account that the time crunch that CHSRA believes it has is a product of its own conscious decision. Thus, as long ago as October 2009, the Authority advised the Federal Railroad Administration:

“Additionally, CHSRA will address potential jurisdiction of the Surface Transportation Board (STB) over any aspect(s) of the HST project and work to ensure timely completion of all prospective regulatory oversight responsibilities consistent with the project delivery schedule.”⁷

Apparently, CHSRA made a conscious decision *not to apply* for a STB determination of its jurisdiction and CHSRA's possible exemption--when there was plenty of time for an orderly proceeding that would allow all interested parties the full opportunity to discover and present all the relevant facts and considerations. The Authority should not now be allowed to abbreviate, confine, or restrict that full opportunity in the interests of its expediency or its self-inflicted time crunch.

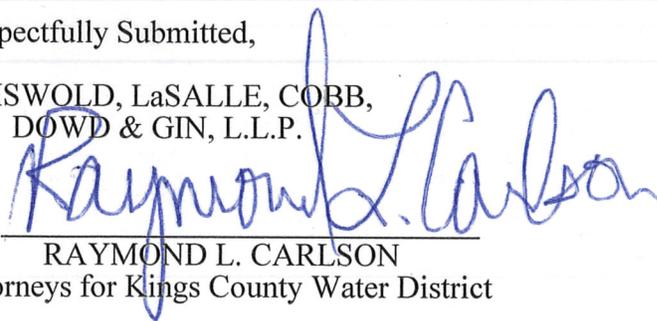
DATED: April 8, 2013.

⁷CHSRA's Application Form for Track 2-Corridor Programs of the Federal Railroad Administration's High-Speed Intercity Passenger Rail (HSIPR) Program, p. 23, submitted Oct. 1, 2009.

Respectfully Submitted,

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.

By:



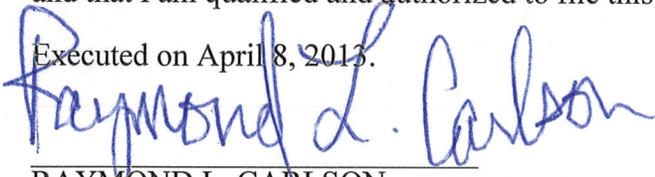
RAYMOND L. CARLSON

Attorneys for Kings County Water District

VERIFICATION

I, Raymond L. Carlson, verify under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this verification.

Executed on April 8, 2013.



RAYMOND L. CARLSON
Attorney for Kings County Water District

PROOF OF SERVICE
CCP §§ 1011, 1013, 1013a, 2015.5; FRCP 5(b)

I am employed in the County of Kings, State of California. I am over the age of 18 years and not a party to the within action; my business address is 111 E. Seventh Street, Hanford, CA 93230.

On, April 8, 2013, I served the following document(s): REQUEST OF KINGS COUNTY WATER DISTRICT FOR EXTENSION OF TIME TO REPLY TO MOTION TO DISMISS PETITION FOR EXEMPTION OF CALIFORNIA HIGH-SPEED RAIL AUTHORITY on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

BY MAIL & OVERNIGHT DELIVERY

Linda J. Morgan
Kevin M. Sheys
Peter W. Denton
NOSSAMAN LLP
1666 K Street, NW
Suite 500
Washington, DC 20006

Attorneys for California High-Speed Rail Authority

Thomas Fellenz
Chief Counsel
CALIFORNIA HIGH-SPEED
RAIL AUTHORITY
770 L Street, Suite 800
Sacramento, CA 95814

Attorney for California High-Speed Rail Authority

Telephone: (916)
Facsimile: (916)

BY MAIL

Michael J. Brady
1001 Marshall Street, Ste. 500
Redwood City, CA 94063-2052

Telephone: (650) 364-8299
Facsimile: (650) 780-1701
E-mail: mbrady@rmkb.com

Stuart M. Flashman
LAW OFFICES OF
STUART M. FLASHMAN
5626 Ocean View Drive
Oakland, CA 94618-1533

Telephone/Facsimile: (510) 652-5373
E-mail: stu@stuflash.com

(By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Hanford, California, in the ordinary course of business.

(By Mail) I deposited such envelope in the United States mail at Hanford, California. The envelope was mailed with postage thereon fully prepaid.

(By Overnight Delivery) I deposited such envelope in the Federal Express/UPS Next Day Air/U.S. Mail Express Mail depository at Hanford, California. The envelope was sent with delivery charges thereon fully prepaid.

(By Electronic Mail) I caused such documents to be sent to the stated recipient via electronic mail to the e-mail address as stated herein.

(By Personal Service) I caused such envelope to be hand delivered to the offices of the addressee(s) shown above.

(By Facsimile) I caused each document to be delivered by electronic facsimile to the offices listed above.

(State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on April 8, 2013, at Hanford, California.


KATIE ASKINS