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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34111

NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD

REPLY OF THE CALIFORNIA COASTAL COMMISSION TO COMMENTS OF THE
ORANGE COUNTY TRANSPORTATION AUTHORITY

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Dated: January 9, 2002

The Comments of the Orange County Transportation Authority (“OCTA”) simply reiterate arguments already made by the North San Diego County Transit Development Board (“NCTD”). Two of OCTA’s points warrant correction, however.

First, OCTA mischaracterizes the blanket exemption that it and NCTD obtained from the Surface Transportation Board (“Board”). *See Orange County Transportation Authority, et al. – Acquisition Exemption – The Atchison, Topeka and Santa Fe Railway Co.*, Finance Docket No. 32173 (served Mar. 12, 1997). As the Board’s blanket exemption order explained, the Interstate Commerce Commission’s “only reason” for designating the transit districts “rail carriers” was to ensure that “they did not unduly interfere” with freight service. *Id.* Recognizing that the transit districts do not provide any service that is subject to the Board’s jurisdiction, the Board granted the transit districts a blanket exemption, with the caveat that the Board retained authority to act if the transit districts were to “interfere unduly” with the provision of rail freight service. *Id.* at n.12. Nothing in the exemption order suggests that the Board would also retain jurisdiction over transit district capital improvement projects that might incidentally benefit freight rail service.

Second, OCTA suggests that Amtrak service over the line confers jurisdiction to the Board. This is incorrect. Except in limited circumstances that do not apply here, the Board does not have jurisdiction over Amtrak. *See* 49 U.S.C. § 24301(c).

Therefore, as explained in the California Coastal Commission’s previous filings, the Board should deny NCTD’s petition for declaratory relief because the Encinitas passing track is

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a state-funded mass transportation project and because requiring the project to comply with the California Coastal Act will not unduly interfere with interstate freight rail service.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that on January 9, 2002, I served a copy of the foregoing Reply to Comments of the Orange County Transportation Authority by overnight UPS Service.

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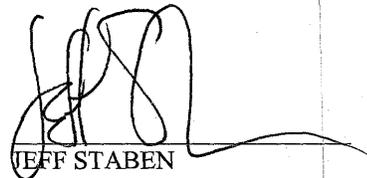
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