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ENTERED
Office of the Secretary

JAN 17 2002

Part of
Public Record

January 16, 2002



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: *North San Diego County Transit Development Board - -
Declaratory Order*, Finance Docket No. 34111

Dear Sir:

This is to advise you that the U.S. District Court for the Southern District of California has issued a decision in the proceeding styled *City of Encinitas v. North San Diego County Transit Development Board, et al.*, Case No. 01-CV-1734-J (AJB). A copy of the decision is attached for your reference. According to the Court in that case, the City of Encinitas had filed an action in state court challenging the proposed construction and operation of a railroad passing track in Encinitas. North San Diego County Transit Development Board ("NCTD") removed the action to the Federal Court, and asked that Court to stay its decision pending the outcome of the proceedings at the STB in the above-referenced docket.

The Federal Court elected instead to dismiss the case for lack of subject matter jurisdiction. It determined, relying on previous decisions of the STB "that NCTD comes within the Act's definition of a rail carrier and is thus subject to STB jurisdiction," *slip op.* at 7. The Court also held:

If the Court were to allow the City of Encinitas to impose environmental or permit regulations upon NCTD operations, NCTD might be prevented from constructing the passing track. Such action would be tantamount to economic regulation by a local government over a rail carrier. The ICCTA demonstrates Congress' intent to preempt such regulatory authority over railroad operations, and to vest jurisdiction over these claims exclusively in the STB. *City of Seattle*, 105 Wash. App. At 836-7. Accordingly, the Court finds that Plaintiff's claims are preempted by the ICCTA.

Id., *slip op.* at 6 - 7.

Hon. Vernon Williams
January 16, 2002
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I am providing a copy of this letter and the attached decision of the U.S. District Court to all parties to this proceeding by overnight delivery service.

Sincerely,



Charles A. Spitulnik



Enclosure

cc: Joseph H. Dettmar, Esquire
All parties on the Certificate of Service
Tracy Richmond, Esquire

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CITY OF ENCINITAS ,
Plaintiff,
vs.
NORTH SAN DIEGO COUNTY
TRANSIT DEVELOPMENT
BOARD, ET AL.,
Defendant.

CASE NO. 01-CV-1734-J (AJB)
ORDER DISMISSING CASE
FOR LACK OF SUBJECT
MATTER JURISDICTION

This matter comes before the Court on Plaintiff City of Encinitas' Motion to Remand to Superior Court of the State of California. Defendant North County Transit Development Board, et al., oppose the Motion to Remand and filed a Motion to Stay this action. Because the Court lacks subject matter jurisdiction over this matter, the Court DISMISSES this case WITH PREJUDICE. Plaintiff's Motion to Remand and Defendants' Motion to Stay are denied as moot.

BACKGROUND

Plaintiff City of Encinitas ("City") filed this action in state court challenging the proposed construction and operation of a railroad passing track. Defendants North San Diego County Transit Development Board, dba North County Transit District, and North San Diego County Transit Development Board, dba San Diego Northern Railway (collectively "NCTD") is a special local transit agency created pursuant to the

23 - 1 -

01-CV-1734-J (AJB)

1 North San Diego County Transit Development Board Act. Plaintiff filed a petition for
2 (1) a writ of mandate for violation of CEQA; (2) a writ of mandate for violation of
3 Public Utilities Code § 126260 (requiring compliance with the 2020 regional
4 transportation plan"); (3) violation of the California Coastal Act (requiring NCTD to
5 apply for a permit). Plaintiff seeks declaratory and injunctive relief preventing NCTD
6 from taking action in furtherance of the passing track until NCTD complies with
7 CEQA and all other applicable laws. (Pl.'s P. & A., Ex. 2 at 19.) Defendants removed
8 this action to federal court on September 26, 2001. Defendants filed a Motion to Stay on
9 October 25, 2001, and Plaintiff filed a Motion to Remand on October 26, 2001.
10 Additionally, the Surface Transportation Board ("STB") instituted proceedings in this
11 case on December 5, 2001. A decision from the STB is currently pending.

12 NCTD plans to construct and operate a 1.7 mile passing tract in the City of
13 Encinitas. The passing track will be located adjacent to an existing San Diego main line,
14 which is part of an interstate rail system. In addition to being used by NCTD, the San
15 Diego rail line is also used by the National Railroad Passenger Corporation (Amtrak)
16 for interstate and intercity passenger service, and by the Burlington Northern and Santa
17 Fe Railway Company ("BNSF") for interstate freight service.

18 The purpose of the passing track, according to Defendants, is to "improve and
19 upgrade the provision of interstate freight and passenger service on this line." (Def.'s
20 Opposition ("Opp.") at 3.) The passing track would be located near commercial and
21 residential developments, a school, and coastal resource areas. Plaintiff argues that
22 unless the passing track complies with applicable laws, including CEQA, California
23 Public Utilities Code § 125000 *et seq.*, and California Public Resources Code § 30600 *et*
24 *seq.*, it will "adversely affect the public health, welfare, and safety of [City's] residents,
25

26 ¹The 2020 Regional Transportation Plan governing NCTD was developed by the San
27 Diego Association of Governments, and provides, in part, that "double tracking the
28 entire line from Oceanside to Centre City San Diego " shall be "conditional on
appropriate environmental impact analyses to evaluate the combined impact of the
double track projects." (Pl.'s Pet. For Writ of Mandate, Pl.'s P. & A., Ex. A at 14.)

1 and adversely affect the physical and human environment within the City.” (Pl.’s P.&
2 A. at 4.)

3 NCTD voted on July 19, 2001 and August 16, 2001 to begin construction of the
4 passing track, and filed a Notice of Exemption from CEQA on July 25, 2001. Plaintiff
5 now alleges (1) because the passing track has the potential to result in adverse
6 environmental impacts, NCTD violated CEQA Guidelines § 15063; (2) NCTD’s actions
7 violated provisions of the 2020 Regional Transportation Plan pursuant to California
8 Public Resources Code § 125000 *et seq*; (3) NCTD’s failure to apply and obtain a Coastal
9 Development Permit from the City before beginning construction activity for the
10 passing track violates California Public Resources Code § 30600. The City also argues
11 that it has legal permitting authority over the passing track under California Resources
12 Code § 30600, providing for the issuance of Coastal Development Permits under the
13 California Costal Act. Plaintiff alleges that it will be “substantially prejudiced in
14 performing its duties” under § 30600 unless NCTD fully complies with CEQA and
15 California Public Utilities Code § 125000.

16 DISCUSSION

17 1. Legal Standard

18 A district court may remand a case to state court pursuant to 28 U.S.C. § 1447(c),
19 which provides that “if at any time before final judgment it appears that the district
20 court lacks subject matter jurisdiction, the case shall be remanded.”

21 A. Preemption under the Interstate Commerce Commission Termination 22 Act (“ICCTA”)

23 Defendants contend that the plain meaning of the ICCTA’s preemption clause,
24 the intent of Congress, and NCTD’s status as a rail carrier compel a conclusion that
25 Plaintiff’s state law claims are preempted. The Supreme Court has identified three types
26 of federal preemption. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992).
27 Conflict preemption exists when the state law actually conflicts with federal law, such
28 that “the state law stands as an obstacle to the accomplishment and execution of the full

1 purposes and objectives of Congress." Freightliner Corp. v. Myrick 514 U.S. 280, 287
2 (1995). Alternatively, field preemption exists when federal law so thoroughly occupies a
3 legislative field "as to make reasonable the inference that Congress left no room for the
4 States to supplement it." Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141,
5 153 (1982) (citation omitted). Finally, express preemption is present when Congress
6 explicitly states its intent to preempt state law. See Cipollone, 505 U.S. at 516.

7 Courts presume that Congress did not intend to displace state law. New York
8 State Conference of Blue Cross & Blue Shield Plans v. Travelers, Ins. Co. 514 U.S. 645
9 (1995). To "overcome the presumption that state laws dealing with matters traditionally
10 within a state's police powers are not preempted," the intent of Congress to preempt
11 must be clear. Renteria v. K&R Transp., Inc., 1999 WL 33268638, *1 (C.D. Cal.); see
12 also Californians for Safe and Competitive Dump Truck Transp. v. Mendonca 152 F.3d
13 1184, 1186 (9th Cir. 1998). The ultimate consideration, therefore, is whether Congress
14 intended to preempt state law. Burlington Northern Santa Fe Corporation v. Anderson,
15 959 F. Supp. 1288, 1292 (D. Mont. Mar. 24, 1997); see also Ingersoll-Rand Co. v.
16 McClendon, 498 U.S. 133 (1990).

17 **1. The Interstate Commerce Commission Termination Act**

18 Congress changed the federal regulatory scheme of railroads with the passage of
19 the ICCTA, effective January 1, 1996. The purpose of the ICCTA was to terminate the
20 Interstate Commerce Commission, replacing it with the Surface Transportation Board
21 within the Department of Transportation ("STB"), thereby "significantly reduc[ing]
22 regulation of surface transportation industries." Flynn v. Burlington Northern Santa Fe
23 Corporation, 98 F. Supp.2d 1186 (E.D. Wash. May 2, 2000); see also Wisconsin Central
24 Ltd. v. The City of Marshfield, 160 F. Supp.2d 1009, 1015 (W.D. Wis. Feb 10, 2000)
25 ("freeing the railroads from state and federal regulatory authority was the principal
26 purpose of Congress.")

27 The relevant provision of the ICCTA, governing the jurisdiction of the STB,
28 provides as follows:

1 (b) The jurisdiction of the Board over--

2 (1) transportation by rail carriers, and the remedies provided in this part
3 with respect to rates, classifications, rules (including car service,
interchange, and other operating rules), practices, routes, services, and
4 facilities of such carriers; and

5 (2) The construction, acquisition, operation, abandonment, or
6 discontinuance of spur, industrial, team, switching, or side tracks, or
7 facilities, even if the tracks are located, or intended to be located, entirely
8 in one State,

9 is exclusive. Except as otherwise provided in this part, the remedies provided
10 under this part with respect to regulation of rail transportation are exclusive and
11 preempt the remedies provided under Federal or State law.

12 49 U.S.C. § 10501(b) (1999).

13 Courts have interpreted this provision broadly, since "[i]t is difficult to imagine a
14 broader statement of Congress' intent to preempt state regulatory authority over
15 railroad operations." CSX Transp., Inc. v. Georgia Public Service Comm'n, 944 F. Supp.
16 1573, 1581 (N.D.Ga. Oct. 28, 1996). Accordingly, numerous district courts considering
17 the issue have identified Congressional intent to assume complete jurisdiction over the
18 regulations of railroad operations. *Id.*; see also Flynn, 98 F. Supp. 2d at 1188; Burlington
19 Northern Santa Fe Corporation, 959 F. Supp. at 1292.

20 The Ninth Circuit, addressing the extent of STB jurisdiction regarding local
21 environmental regulations, noted that "congressional intent to preempt this kind of state
22 and local regulation of rail lines is explicit in the plain language of the ICCTA and the
23 statutory framework surrounding it." City of Auburn v. U.S., 154 F.3d 1025 (9th Cir.
24 1998). In City of Auburn, like the case at bar, the Burlington Northern and Santa Fe
25 Railway desired to reestablish and repair a rail line. The railroad initially sought permit
26 applications from local authorities for the project, but later contended that federal
27 regulation precluded local environmental review. The Court agreed, finding that federal
28 preemption existed because "congressional intent is clear, and the preemption of rail
activity is a valid exercise of congressional power under the Commerce Clause." City of
Auburn, 154 F.3d at 1031.

2. Preemption of Plaintiff's claims

Plaintiff argues that its claims fall under the City's "traditional police power to

1 protect the health, safety, and welfare of the public." The ICCTA's preemption
2 provision is narrowly tailored to displace only "regulation" of rail transportation, and
3 permits the application of laws having a more remote or incidental effect on rail
4 transportation. Florida East Coast Railway Co. v. City of West Palm Beach, 266 F.3d
5 1324, 1331 (11th Cir. 2001). Plaintiff asserts that this case is a "land use and planning"
6 action seeking redress of violations of the California Public Utilities Code § 125000 *et*
7 *seq.*, the California Public Resources Code § 30600 *et seq.*, and other state laws which do
8 not constitute "regulation" of rail transportation.

9 Although state and local governments may retain police powers for the purpose
10 of protecting public health and safety, the ICCTA prohibits any government action or
11 regulation which forecloses or restricts the "railroad's ability to conduct its operation or
12 otherwise unreasonably burden interstate commerce." City of Seattle v. Burlington
13 Northern Railroad Co., 105 Wash.App. 832, 837 (2001).

14 The Ninth Circuit, faced with environmental regulation claims similar to the case
15 at bar, found evidence of clear congressional intent to preempt "this kind of state and
16 local regulation of rail lines." City of Auburn, 154 F.3d at 1031. Furthermore, the court
17 found that the broad language of § 10501(b)(2) blurred the distinction between
18 "economic" and "environmental" regulations. *Id.* For example, "if local authorities have
19 the ability to impose 'environmental' permitting regulations on the railroad, such power
20 will in fact amount to 'economic regulation' if the carrier is prevented from
21 constructing, acquiring, operating, abandoning, or discontinuing a line." *Id.*

22 If the Court were to allow the City of Encinitas to impose environmental or
23 permit regulations upon NCTD operations, NCTD might be prevented from
24 constructing the passing track. Such action would be tantamount to economic
25 regulation by a local government over a rail carrier. The ICCTA demonstrates
26 Congress' intent to preempt such regulatory authority over railroad operations, and to
27 vest jurisdiction over these claims exclusively in the STB. City of Seattle, 105
28 Wash.App. at 836-7. Accordingly, the Court finds that Plaintiff's claims are preempted

1 by the ICCTA.

2 **B. NCTD's status as a rail carrier**

3 Plaintiff contends that City of Auburn is inapplicable to this case because, unlike
4 the railroad companies in Auburn, NCTD is not a railroad engaged in transportation
5 goods through interstate commerce. (Pl.'s P. & A. at 12.) Furthermore, Plaintiff argues,
6 pursuant to 49 U.S.C. § 10501(c)(2), the STB lacks jurisdiction over mass transportation
7 projects by local government authorities.

8 However, the Court finds that NCTD is both a commuter rail operator and a
9 "rail carrier" owning and operating an interstate rail line. Defendant has provided
10 numerous decisions issued by the STB, as well as informal letters, confirming that
11 NCTD is a rail carrier subject to STB jurisdiction. See Def's Opp. Ex. 1-4. Furthermore,
12 under NCTD's Shared Use Agreement with Amtrak and BNSF, NCTD is obligated to
13 "efficiently maintain its rail line for both interstate and intra rail traffic." (Def's Opp. at
14 8.) Accordingly, the Court determines that NCTD comes within the Act's definition of
15 a rail carrier and is thus is subject to STB jurisdiction. See CSX Transp., 944 F. Supp. at
16 1582; see also Interstate Commerce Commission v. Detroit G.H. & M.R. Co., 167 U.S.
17 633 (1897) (state railroad corporation which voluntary engages in interstate commerce
18 become subject, so far as such traffic is concerned, to the provisions of the interstate
19 commerce law).

20 **II. Subject Matter Jurisdiction**

21 Defendants assert federal question jurisdiction pursuant to 28 U.S.C. § 1331.
22 However, Congress abrogated district court jurisdiction under § 1331 when it placed
23 exclusive jurisdiction of railroad transportation under the STB. Elynn, 98 F. Supp. 2d at
24 1192; see also 49 U.S.C. § 10501(b) (1999). Pursuant to 49 U.S.C. § 11701(b), a party
25 may file a complaint with the STB about a violation by a rail carrier providing
26 transportation or service subject to the jurisdiction of the STB. If the STB finds a
27 violation, the Board "shall take appropriate action to compel compliance...." 49 U.S.C. §
28 11701(a). A party seeking to enjoin or suspend an order of the STB shall bring an action

1 in the Court of Appeals. 28 U.S.C. § 2321(a) (2001 Supp.). The Court of Appeals "has
2 exclusive jurisdiction to enjoin, set aside, suspend...or to determine the validity of... (5)
3 all rules, regulations, or final orders" of the STB. 28 U.S.C. § 2342(5) (2001 Supp.) The
4 federal remedies provided by the ICCTA are "the only remedies available as to the
5 regulation of rail transportation...the federal remedies are exclusive of state remedies
6 except where the ICCTA has expressly provided otherwise." CSX Transp., 944 F. Supp.
7 at 1581. Neither the state court nor the district court has jurisdiction over these claims.
8 Rather, Plaintiff should bring its claims before the STB and, if necessary, appeal a
9 decision by the STB to the Court of Appeals. Flynn, 98 F. Supp.2d at 1190; see also
10 Redmond-Issaquah Railroad Preservation Assoc. v. STB, 223 F.3d 1057, 1059 (9th Cir.
11 2000) (noting that the ICCTA granted authority to review all acquisitions of rail lines to
12 the STB).

13 Subject matter jurisdiction is "not conferred on the district court by Plaintiff's
14 request for declaratory judgment and an injunction." Flynn, 98 F.Supp. 2d at 1192. Since
15 Plaintiff cannot bring a cause of action in federal court under the ICCTA, and no other
16 source of federal question jurisdiction exists, this Court does not have subject matter
17 jurisdiction over this claim.² Furthermore, because this claim is preempted by the
18 ICCTA, which vests exclusive jurisdiction over this claim in the STB, a district court
19 cannot have jurisdiction over this matter. Flynn, 98 F. Supp. 2d 1186; see also The
20 Township of Woodbridge, N.J. v. Consolidated Rail Corporation, S.T.B. Fin. Docket
21 No. 42053, 2000 WL 1771044 (I.C.C. Nov. 28, 2000). Further amendment would
22 therefore be futile. In the absence of jurisdiction, this Court cannot grant Plaintiff's
23 requested declaratory and injunctive relief. Id. A dismissal for lack of subject matter
24 jurisdiction is not a judgment on the merits and therefore is a dismissal without

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²The Court therefore need not address abstention issues under the Pullman doctrine.

1 prejudice. Flynn, 98 F. Supp. 2d at 1192. Accordingly, the Court DISMISSES Plaintiff's
2 claim WITHOUT PREJUDICE. Plaintiff's Motion to Remand and Defendant's
3 Motion to Stay are DENIED as MOOT. Plaintiff's requests for attorneys fees and costs
4 is DENIED.

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6 IT IS SO ORDERED.

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8 DATED: January 11, 2002


NAPOLEON A. JONES, JR.
United States District Judge

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10 cc: All Parties

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