



Office of the Commissioner

Surface Transportation Board
Washington, D.C. 20423-0001

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May 21, 2013

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Public Record

The Honorable Barbara Boxer
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senator Boxer and Senator Feinstein:

Thank you for your recent letter concerning the California High-Speed Rail Authority's request for a construction exemption from the Board in STB Finance Docket No. 35724, California High-Speed Rail Authority – Construction Exemption – In Merced, Madera, and Fresno Counties, Cal. This matter has garnered significant public attention and I appreciate the concerns that you have expressed on behalf of your constituents.

Because the Authority's exemption request is pending at the Board, I cannot comment on the substance of your letter. I do note that today the Board has issued a decision regarding the request for an extension of the public comment period. For your convenience, I have attached a copy of that decision to this letter.

During my tenure at the Board, I have considered a number of rail construction cases and I look forward to addressing the issues raised here. Please know that my consideration of the Authority's pending construction exemption request will be thorough and complete.

Sincerely,



Francis P. Mulvey
Commissioner

Attachment

cc: Daniel R. Elliott III, Chairman
Ann D. Begeman, Vice Chairman

SERVICE DATE – MAY 21, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35724

CALIFORNIA HIGH-SPEED RAIL AUTHORITY—CONSTRUCTION EXEMPTION—IN
MERCED, MADERA AND FRESNO COUNTIES, CAL.

Digest:¹ This decision denies a request to extend the comment period in this proceeding.

Decided: May 20, 2013

On March 27, 2013, California High-Speed Rail Authority (Authority), a noncarrier state agency, filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct an approximately 65-mile dedicated high-speed passenger rail line between Merced and Fresno, Calif. Concurrently, the Authority filed a motion to dismiss the petition for lack of jurisdiction.

By decision served on April 18, 2013, the Board denied the Authority's motion to dismiss and extended the deadline for replies to the petition to May 8, 2013.

By letter dated May 7, 2013 (May 7 request), 13 Members of Congress representing congressional districts in California—Representatives Kevin McCarthy, David Valadao, Devin Nunes, Ken Calvert, Darrell Issa, Buck McKeon, Ed Royce, Doug LaMalfa, John Campbell, Dana Rohrabacher, Duncan Hunter, Tom McClintock, and Paul Cook—requested that the Board extend the comment period to July 15, 2013, and that the Board refrain from publishing any procedural schedule until after the comment period has closed. They urge that such an extension “reflects the complexity, cost, and size of California high speed rail,” and that “extension of the current public comment period is warranted to ensure the Board is provided with the best information to make a fully informed decision on this matter after robust public comment.” On May 14, 2013, Jeff Taylor submitted a letter in support of the extension request.

Three other Members of Congress also representing congressional districts in California—Representatives Zoe Lofgren, Janice Hahn, and Jim Costa—submitted a letter on May 8, 2013, urging the Board to “give full and fair consideration” to the Authority's pending petition and noting that the Board's review of the Project “should not result in lengthy delays.”

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

On May 10, 2013, the Authority filed a letter requesting that the Board deny any further extension of the comment deadline. On May 15, 2013, United States Senators Barbara Boxer and Dianne Feinstein of California submitted a letter urging that, if the Board were ultimately to grant the exemption, the decision be issued “with sufficient notice to allow the Authority to move forward with its construction plans for the summer” of 2013. Eleven members of the Congressional Bicameral High-Speed and Intercity Passenger Rail Caucus—Senators Frank R. Lautenberg and Richard J. Durbin, and Representatives Louise M. Slaughter, Corrine Brown, David E. Price, George Miller, Michael Honda, Adam Schiff, Doris O. Matsui, André Carson, and Paul Tonko—submitted a letter on May 17, 2013, expressing the view that the Board “should not unnecessarily delay a project that has already received substantial federal, state, and local review.” Also on May 17, 2013, the Transportation Trades Department, AFL-CIO, submitted a letter opposing the extension request.

In light of our previous extension of the comment deadline and the volume of comments we have received thus far, we find that sufficient time has been allotted for public participation in this proceeding. The six weeks permitted for comments in this case (from the March 27 filing date through May 8) is more than double the typical 20-day reply period provided under 49 C.F.R. § 1104.13. The Board previously established the May 8 comment deadline in order to ensure that all interested parties had ample time to participate in this proceeding, so that the record before the Board would reflect the full spectrum of interests involved. Given that the Board has received numerous comments from Federal, state and local elected officials, residents, landowners, water districts, school districts, grassroots organizations, unions, and other interested parties, we find the existing comment period to be adequate. Therefore, the request to extend the comment deadline further will not be granted. We note that, under the notice served in this docket on April 12, 2013, comments on the proposed adoption by the Board of the Final Environmental Impact Statement issued by the Federal Railroad Administration and the Authority could be submitted to the Board’s Office of Environmental Analysis through May 20, 2013.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The May 7 request to extend the comment period further is not granted.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.
Vice Chairman Begeman dissented with a separate expression.

VICE CHAIRMAN BEGEMAN, dissenting:

In its April 18, 2013 decision, the Board held that it has jurisdiction over the proposed California High-Speed Train System and that it has not determined whether the exemption criteria under 49 U.S.C. § 10502(a) are satisfied, but will do so after reviewing the public comments.

It isn't often that the Board is contacted by so many Senators and Representatives of districts in one State that could be impacted by a proposal before the Board, all of whom seem to agree that thorough consideration of the proposal at issue is warranted. I continue to believe we should direct the California High-Speed Rail Authority to file an application in order for the Board to fully analyze the proposal given the scope of the project and significant public interest. Some additional time for greater public participation may aid the Board in rendering a decision.

Given the level of Congressional support seeking an extension of the comment period, with no members on record indicating outright opposition to the idea of an extension, I believe the majority should respond favorably to the Congressional request to extend the comment period for a reasonable period of time. While I would embrace the July 15, 2013 extension request, I would have also considered a more limited extension, if the majority would have been willing to consider that option.

For the foregoing reasons, I must dissent from the Board's decision.