

THE FRANK LAW FIRM, PLLC

1017 William D. Tate Avenue, Suite 110
Grapevine, Texas 76051

Michael A. Bucek
mabucek@aol.com
August 26, 2019

ENTERED
Office of Proceedings
September 3, 2019,
Part of
Public Record
Phone: (817) 949-2161
Fax: (817) 416-6292

CERTIFIED MAIL NO.: 7015 0640 0001 8484 4738

Chief
Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

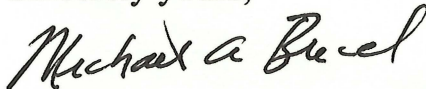
Re: Finance Docket No. 36025; TEXAS CENTRAL RAILROAD AND
INFRASTRUCTURE, INC. & TEXAS CENTRAL RAILROAD, LLC -AUTHORITY
TO CONSTRUCT AND OPERATE - PETITION FOR EXEMPTION FROM 49 U.S.C.
§ 10901 AND SUBTITLE IV - PASSENGER RAIL LINE BETWEEN DALLAS, TX
AND HOUSTON, TX; Response of JBJQ Ranch to Petitioner's Response to
Surface Transportation Board's Request for Additional Information

Dear Chief:

Enclosed please find an original and one copy of **"JBJQ Ranch's Response to Petitioner's Response to Surface Transportation Board's Request for Additional Information"** in the cause filed by Texas Central in Finance Docket No. 36025 as referenced above. Would you please file stamp the original and the copy of JBJQ Ranch's Response and return the copy in the self-addressed and stamped envelope?

Should you have any questions, please contact me at my cell phone number of 817-319-4298

Sincerely yours,



Michael A. Bucek
Of Counsel to the Firm
State Bar No. 03285500
817-319-4298 (cellular)



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. & TEXAS
CENTRAL RAILROAD, LLC - AUTHORITY TO CONSTRUCT AND
OPERATE - PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND
SUBTITLE IV - PASSENGER RAIL LINE BETWEEN DALLAS, TX AND
HOUSTON, TX**

**JBJQ Ranch's Response to Petitioner's Response to Surface
Transportation Board's Request for Additional Information**

**Michael A. Bucek
Of Counsel to The Frank Law Firm, PLLC
1017 William D. Tate Ave., Suite 110
Grapevine, TX 76051
817-319-4298 (cellular)
817-949-2161 (office)
817-416-6292 (fax)
mabucek@aol.com**

Attorneys for JBJQ Ranch

Dated: August 26, 2019



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. & TEXAS
CENTRAL RAILROAD, LLC - AUTHORITY TO CONSTRUCT AND
OPERATE - PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND
SUBTITLE IV - PASSENGER RAIL LINE BETWEEN DALLAS, TX AND
HOUSTON, TX**

**JBJQ Ranch's Response to Petitioner's Response to Surface
Transportation Board's Request for Additional Information**

Texas Central's response to the Surface Transportation Board's (STB's) Request for Additional Information defies logic as it relates to its assertion that the volume of interstate passengers riding it's proposed "**intrastate**" bullet train has no application to the STB determination of whether or not it has jurisdiction over its Petition. Texas Central forecast of interstate ridership is less than 1% of its expected annual ridership. The 87th District Court of Texas has held that Texas Central (not owning any trains, rails, depots, etc.) is not a railroad so it is not entitled under Texas law to utilize eminent domain in acquiring right-of-way for its proposed bullet train. Texas Central seeks STB approval to convert its **intrastate** train into an interstate train and thereby obtain the ability to use eminent domain under federal jurisdiction. In logic, the **Law of Excluded Middle** (espoused by Aristotle) **states that for any proposition, either the proposition is true or its negation is true.** If there's no connection of **intrastate rails** to interstate rails then one would logically find that a Dallas to Houston rail line is an **intrastate line**. Logically, it would follow, if 99% of passengers on the bullet train are only riding from

Dallas to Houston and not connecting with an Amtrak train then this rail line would be an **intrastate line** unless there's a questionable motive (e.g. obtaining the use of eminent domain) for reaching a determination that such line is an *interstate line*. Texas Central only began contract negotiations with Amtrak after the STB on July 18, 2016 suggested its plans to contract with Amtrak were too speculative. If Texas Central finds Aristotle's approach to law too constraining then perhaps the logic of the U.S. Supreme Court in *United States v. Lopez*, 514 U.S. 549 (1995), would be more palatable. This case **found a regulation unconstitutional if the activity being controlled did not have a substantial effect on interstate commerce.**

Justice Rehnquist in such opinion stated in part:

" . . . In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." 301 U. S., at 37; see also *Darby*, supra, at 119-120 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce); *Wickard*, supra, at 125 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce. See, e. g., *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 276-280 (1981) ..."

Aristotle must have been pretty intuitive to know that in the distant future an entity like Texas Central would try to run rough shod over landowners. The majority of landowners along the current route of the Dallas to Houston High Speed Rail (HSR) have been the recipient of the arrogance of Texas Central from the beginning of this process. Texas Central's agents have manipulated the guidelines for adopting an Environmental Impact Statement (EIS) in a manner that has resulted in Federal Railway Administration's (FRA) staff approving a Draft EIS that selects a route for the bullet train which is the least expensive route to buy and to build; has the greatest negative impact to the environment and causes the greatest remainder damages to the

landowners adjacent to the right-of-way. The *laissez faire* attitude directed toward landowners by Texas Central agents and the unwillingness of such agents to provide information to the STB regarding the financial stability of Texas Central requires the STB to remain vigilant in its oversight of the certifications/permits being requested by Texas Central.

Let us summarize some key issues in the Draft EIS: (A) The proposed bullet train route ignores the three corridors suggested by the State of Texas in its Texas Rail Plan from 2010 to 2014 upon which landowners had relied. The proposed route (referred to as the Utility Corridor) is within several hundred feet of a corridor that was proposed by Cross Texas Transmission, LLC (Cross Texas) in April, 2015 for an Electric Transmission Line that was rejected by the Texas Public Utility Commission (PUC) because of the damage it would cause to the forests and woodlands of the State of Texas that are habitats for wildlife. Moving the bullet train to the PUC approved Cross Texas route could not be considered by Texas Central because it might increase the time to travel from Dallas to Houston by 2 minutes. (B) Rather than acquiring the needed Right-of-Way for the bullet train by permanent easement, the Draft EIS allows Texas Central to take the properties in fee simple. Whereas in the Utility Corridor there are existing pipelines and transmission lines that allow for easy access by landowners to each side of the permanent easements and continued use of the easement area for cattle grazing, Texas Central by taking the right-of-way in fee simple and constructing a totally fenced and elevated berm, landlocks many of the landowners' access to their remaining tracts. Farming equipment, cattle, wildlife, etc. in the future will not be able to move from one side of a landowner's property to the other side.

It's one thing for the State of Texas to take your property, because if a State project fails there remains the ability of the State to correct any damage that has resulted to landowners by reason of a project that has been abandoned. This bullet train is in reality an “**intrastate line**” that

should be controlled by Texas regulations as the STB originally decided in this cause. Texas Central argues the proposed bullet train is an “interstate line” because it has a passenger ticketing arrangement with Amtrak. Texas Central points to comments made by STB in its original ruling in this matter and other projects approved by STB that ticketing arrangements can convert **“intrastate lines”** into “interstate lines”, and such decisions by the STB has set a precedent that the STB must follow. Every case stands on its own merits. The total fact situation must be considered. For example, (1) were other ticketing arrangements between Amtrak with existing railroad companies [Texas Central is not currently a railroad. There are no existing assets (e.g. rails, engines, depots, etc.) which could be sold to compensate landowners, in our fact situation, for damages such landowners might suffer if Texas Central abandons this project after berms have been constructed. Remember in our situation, a partially built Japanese designed rail system could not be easily taken over by another railroad company that uses traditional rail design if Texas Central were to be involved in bankruptcy proceedings]; (2) were other ticketing arrangements between Amtrak with proposed railroad companies provided to the STB after such companies had (a) received a Final Environmental Impact Statement or (b) filed Covenants Running with the Land that protected landowners from abandonment of the project [e.g. if project is abandoned the right-of-way reverts to the landowner and the railroad company must remove the berm and rails from landowner’s property and provide a letter of credit or bond to secure performance relating to removal of the berm and rails].

CONCLUSION

JBQ RANCH would request that the STB deny the Petition for Exemption and all relief sought by Texas Central **on the grounds that a possible 1% ridership on the bullet train by interstate passengers does not convert this proposed intrastate railroad into an interstate**

railroad because there is no substantial effect on interstate commerce. *In the alternative, the relief sought by Texas Central should be denied for failure to provide financial feasibility for the bullet train and financial assurance to protect landowners should the bullet train project be abandoned.*

If STB concludes it is bound by prior precedent and the bullet train is going to be certified to operate as an interstate railroad then special requirements need to be placed on such certification to protect landowners from a project that might be abandoned during construction or after completion for lack of ridership. Title 49 of the United States Code says in part

§10901. Authorizing construction and operation of railroad lines

(a) A person may—

- (1) construct an extension to any of its railroad lines;
 - (2) construct an additional railroad line;
 - (3) provide transportation over, or by means of, an extended or additional railroad line; or
 - (4) in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line,
- only if the Board issues a certificate authorizing such activity under subsection (c).

(b) *A proceeding to grant authority under subsection (a) of this section begins when an application is filed.* On receiving the application, the Board shall give reasonable public notice, including notice to the Governor of any affected State, of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest . . .

(Added Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 822.)

Based on the foregoing we would request that **any certification or permit issued by the STB to**

Texas Central provide:

- (a). Viaducts or some type of improved openings to landowners who own substantial acreage (e.g. 25 acres or more) on each side of the Right-of-Way for the HSR so that livestock, wildlife

and farming and ranching equipment can traverse from one side of the Right-of-Way to the other side without interference;

(b) Rights-of-way purchased by Texas Central, regardless of the conveying language signed by Grantors, shall be treated as permanent easements and Texas Central agrees that should it fail to operate or construct a railway or ceases to operate for a period of 8 years or if, its construction having been commenced, work on the same has ceased and has not in good faith resumed for 8 years, the right-of-way will be considered abandoned and the rails, berms and improvements (all hereafter referred to as "improvements") in such right-of-way shall be removed by Texas Central, and the right-of-way shall revert to the persons who, at the time of the reversion, are owners of the tract from which such right-of-way was taken.

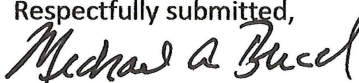
(c) To protect the persons referenced in subsection (b) above, Texas Central agrees to provide to grantors identified in such subsection (b) evidence of financial assurance prior to beginning activities on such right-of-way to secure the removal of the improvements placed in the right-of-way should such right-of-way be subsequently abandoned by Texas Central. Texas Central may provide (1) an irrevocable letter of credit issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System or a Texas banking department where accounts are insured by the Federal Deposit Insurance Corporation, or (2) a bond issued by an entity licensed to do business in the State of Texas by the Texas Department Insurance. The amount of the bond/letter of credit must be at least equal to the estimated amount by which the cost of removing of the improvements and restoring the property to as near reasonably possible the condition of the land as of the date the deed/permanent right of way easement was signed exceeds the salvage value of such improvements. The letter of credit/bond shall be adjusted once every 5 years and the estimate of the restoration costs and salvage value

shall be determined by an independent, third-party, professional civil engineer licensed in Texas. Failure to provide financial assurance may be enforced by injunction or other remedies available at law. These protections may not be waived by Grantors.

(d)Emergency vehicle and bus access to existing homes and properties not being purchased or condemned by Texas Central be comparable to such properties current access; and

(e)That roadways of cities and counties damaged by the construction of the bullet train right-of-way (including deterioration of nearby roadways resulting from Texas Central transporting heavy equipment hauling dirt and other construction materials to construction sites) be returned to the condition that such roadways existed prior to the bullet train project or better.

Respectfully submitted,



Michael A. Bucek

Of Counsel to The Frank Law Firm, PLLC

1017 William D. Tate Ave., Suite 110

Grapevine, TX 76051

817-319-4298 (cellular)

817-949-2161 (office)

817-416-6292 (fax)

mabucek@aol.com

Attorneys for JBJQ Ranch

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2019, I caused a copy of the foregoing to be served upon the attorneys below and all parties of record by email or by U. S. first class mail, postage prepaid.

Raymond A. Atkins

Terence M. Hynes

Louis P. Warchot

Sidney Austin LLP

1501 K Street, N.W.

Washington, D.C. 20005

(202) 736-8000

Counsel to Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC

Kathryn K. Floyd

Jay C. Johnson

Margaret K. Fawal

Venable LLP

600 Massachusetts Ave. N.W.

Washington, D.C. 20001

(202) 344-4400



Michael A. Bucek