

New lawsuit in Fresno challenges cap-and-trade money for high-speed rail

 fresnobee.com/2014/06/23/3992439/new-lawsuit-in-fresno-challenges.html

By Tim Sheehan

A Bay Area group that is critical of using cap-and-trade money for California's controversial high-speed rail project is suing the state Air Resources Board for including the proposed bullet train among measures to reduce greenhouse gases in the state.

The lawsuit was filed Monday in Fresno County Superior Court by Oakland attorney Stuart Flashman on behalf of Transportation Solutions Defense and Education Fund, or TRANSDEF. The San Rafael nonprofit weighs in on a range of transportation, land use and air quality issues in the San Francisco Bay Area and California.

TRANSDEF contends in the suit that instead of reducing greenhouse gases including carbon dioxide, cement production for construction of the rail line "would result in significant increases in ... emissions." The suit alleges that the Air Resources Board violated provisions of the California Environmental Quality Act and Assembly Bill 32, the Global Warming Solutions Act, last month when it approved high-speed rail among projects qualified for cap-and-trade money.

The air board's approval was the basis for Gov. Jerry Brown and the state Legislature agreeing to allocate \$250 million in cap-and-trade funds in the 2014-15 budget for high-speed rail, and earmarking 25% of future cap-and-trade income each year for the bullet train -- potentially \$3 billion to \$5 billion a year. The suit not only asks for a court order for the air board to rescind its approval of the high-speed rail program, but also wants a judge to declare invalid the Legislature's subsequent budget allocation.

Under the cap-and-trade program, companies that produce air pollution above certain limits can buy emission credits in state-run auctions.

The lawsuit contends that the Air Resources Board disregarded testimony presented at a public hearing last month by TRANSDEF and its president, David Schonbrunn, opposing the use of cap-and-trade money for high-speed rail.

"High-speed rail should not be shown ... as a GHG (greenhouse gas) emissions reduction measure," Schonbrunn testified on May 22. "The claimed GHG emissions reductions are a very expensive fantasy: they depend on \$30 billion of project funding that the (California High-Speed Rail Authority) doesn't have and can't get."

Instead, Schonbrunn and Flashman said in the lawsuit, the air board relied on a greenhouse gas emissions analysis prepared by the rail authority -- a document the suit says "grossly misrepresented the GHG emissions impacts of its proposed high-speed rail project."

That report was flawed, the suit asserts, "by not only understating the construction-related emissions" compared to potential long-term reductions in greenhouse gases once the trains start operating in the 2020s, but also "by omitting entirely the GHG emissions impacts associated with manufacturing the many thousands of tons of cement that would be needed for the project's construction."

Because the air board "failed to respond" to Schonbrunn's testimony "or to correct the errors" that he

identified in May, suing the agency was TRANSDEF's last resort.

The air board insists that high-speed rail "has been an integral element of California's efforts to cut greenhouse gases under AB 32 since the first scoping plan in 2008," said Stanley Young, a spokesman for the Air Resources Board.

"Not only will (high-speed rail) be constructed with net-zero emissions, but it will dramatically reduce car miles traveled in the state," Young added. "Its contribution to California's overall effort to fight climate change was affirmed by the Legislature when it passed the budget recently with funding for high-speed rail from cap-and-trade proceeds."

Flashman no stranger to high-speed rail debate

This case is the latest of several legal battles over high-speed rail in which Flashman is engaged.

He also represents the Bay Area city of Atherton in its lawsuit against the California High-Speed Rail Authority over routing the rail corridor down the peninsula and over the Pacheco Pass into the San Joaquin Valley instead of the Altamont Pass further north.

Flashman also is one of the attorneys for Kings County and two of its residents in cases against the rail agency -- one challenging the statewide rail plan's compliance with state law, the other over whether the state followed the proper process to approve the sale of bonds to help finance the construction of the rail line in the central San Joaquin Valley.

All three of those cases are pending at the state's 3rd District Court of Appeal in Sacramento.

The rail authority also faces a crop of six lawsuits in Sacramento County Superior Court stemming from its environmental certification and approval of the Fresno-Bakersfield segment of the statewide rail project last month.

The Kings County Board of Supervisors, Kings County Farm Bureau and Citizens for California High-Speed Rail Accountability are teaming up in one of those cases to challenge the adequacy of the environmental analysis.

The other lawsuits all hail from Kern County -- one each by the Kern County Board of Supervisors, the Bakersfield City Council, the First Freewill Baptist Church in Bakersfield, Dignity Health and Coffee-Brimhall LLC.

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