

State rail agency seeks to avoid bullet-train injunction battles

By Tim Sheehan

The California High-Speed Rail Authority is facing seven lawsuits over its approval of the Fresno-Bakersfield segment of its statewide bullet-train line. Now the agency is asking the federal Surface Transportation Board — which oversees rail lines in the U.S. and gave a green light to the project over the summer — to declare that those lawsuits should not be able to seek a California judge's order to block construction.

The authority's [petition to the federal board](#), filed earlier this month, is the second time that the rail agency has taken a "head-'em-off-at-the-pass" tactic to argue that federal jurisdiction over the project essentially overrides portions of the California Environmental Quality Act. The lawsuits challenging the state's approval of the Fresno-Bakersfield segment allege that the state's environmental analysis of the route was inadequate and does not provide enough measures to make up for anticipated harm to residents, farmers, businesses and communities along the route.

The [Surface Transportation Board](#), made up of three presidential appointees, is giving project supporters and opponents until Nov. 6 to respond to the rail authority's petition.

Each of the seven CEQA cases filed against the rail authority in June are pending in Sacramento County Superior Court, where they await a Nov. 21 court date before Judge Michael Kenny. One suit was filed jointly by Kings County, rail opposition group Citizens for California High-Speed Rail Accountability and the Kings County Farm Bureau. The other six were filed by Kern County, the cities of Shafter and Bakersfield, and a church, hospital and real-estate development firm in Bakersfield.

In the federal petition, attorneys for the rail authority note that the lawsuits seek injunctions that "would delay or prevent the construction the STB has authorized." The federal board, the petition states, "needs to declare whether an STB-approved rail construction can be halted by a conflicting injunction issued in a CEQA action challenging project-level compliance."

Douglas P. Carstens, a Hermosa Beach attorney representing the Kings County plaintiffs, said he found it "galling and shocking" that the state would ask the federal government to intervene. "It's sort of like going outside the family," he said. "It's one thing to go to the state Court of Appeal. It's another to go to a federal agency and say, 'Why don't you block us in California from applying our own law?'"

"Sure, the STB has a voice in (approving the project)," Carstens added, "but they should not deprive the people of California from their voice in it."

Earlier this year, a state appellate court sidestepped the issue of federal jurisdiction when it ruled in the authority's favor in the Bay Area town of Atherton's lawsuit over the state's selection of the Pacheco Pass over the Altamont Pass as the general path for high-speed rail between the Bay Area and the San Joaquin Valley. The rail agency had filed a brief with the 3rd District Court of Appeal asserting that since the Surface Transportation Board had exercised jurisdiction over the proposed high-speed train system, the federal National Environmental Policy Act (NEPA) took precedence over the the state environmental law — thus short-circuiting the prospect of CEQA lawsuits in the state court system.

The justices, however, brushed off that contention: "It is the state that is constructing the rail line, financed by bonds which were approved by the state's electorate in Proposition 1A." Prop. 1A is the \$9.9 billion high-speed rail bond act that was approved by California voters in November 2008. The justices added that Prop. 1A requires the rail authority to comply with state environmental law.

But the choice of Pacheco Pass contested in the Atherton lawsuit appeal did not involve a route or project that had been approved by the Surface Transportation Board. “As a result, the court in *Atherton* did not have to address ... whether a state court under CEQA can enjoin construction of the thing the (federal) board has authorized,” attorneys said in the latest petition.

In a statement this week, state Sen. Andy Vidak, R-Hanford, accused the rail agency of “trying to dodge the law.” Vidak, a vocal opponent of the rail project who faces a vigorous election challenge next week, sent a letter Monday to the Surface Transportation Board urging the panel to deny the authority’s petition. “I want to make sure that the high-speed rail project goes through all facets of the normal environmental review process,” he wrote. “This includes complying with both (NEPA and CEQA) and the mitigation requirements and injunctive relief imposed by the courts.”

The petition states that the rail authority is not asking the board to rule on whether federal law entirely pre-empts the state environmental law. Nor does the state seek a declaration that would exempt it from court orders for more environmental analysis or additional measures to make up for anticipated environmental effects along the route that don’t involve a work stoppage on the Fresno-Bakersfield section.

The rail agency is asking the federal board to fast-track a decision on the petition by Nov. 20, a day before the status conference in Judge Kenny’s Sacramento courtroom. A rapid decision “would eliminate controversy and remove uncertainty in advance of this first appearance and case-management conference,” the authority’s attorneys stated.

Lisa Marie Alley, a spokeswoman for the rail authority, said the agency is simply seeking clarity from the Surface Transportation Board on what its jurisdiction — sought in early 2013 by outspoken high-speed rail critic Rep. Jeff Denham, R-Turlock — means to the legal process.

“Now we’re asking them to clarify the effect of the federal jurisdiction on the project ... and confirm or deny” whether it pre-empts the ability of the state court judge to issue an injunction to stop construction, she added.

Alley said the rail authority has demonstrated its commitment to CEQA compliance by “submitting one of the most comprehensive environmental documents ever for this project.” She added that project opponents “are abusing CEQA not to protect the environment, but to try to kill high-speed rail.”

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