

# Rail foes ask court to overturn federal board's decision to block state law

By Tim Sheehan

Two Valley counties and a collection of nonprofits that oppose California's high-speed rail project filed a petition Monday with the U.S. Ninth Circuit Court of Appeal, hoping to overturn a federal agency's ruling that state courts cannot enforce the state's environmental law against the rail line.

Attorneys for Kings and Kern counties were joined by the Kings County Farm Bureau and the Kings County-based Citizens for California High-Speed Rail Accountability in the challenge filed with the appeals court in San Francisco. Also joining the petition are two Bay Area organizations, the Community Coalition on High-Speed Rail and TRANSDEF (Transportation Solutions Defense & Education Fund), and the Sacramento-based California Rail Foundation.

The [petition](#) comes about two months after the federal Surface Transportation Board — a three-member panel of presidential appointees that oversees the nation's interstate rail system — [declared on a 2-1 vote](#) that because the agency has jurisdiction over California's project, federal law supersedes the [California Environmental Quality Act \(CEQA\)](#) in regulating the Fresno-Bakersfield portion of the statewide rail line. The ruling also set the stage for possible sidelining CEQA as the rail project moves through environmental approvals on other sections. The federal panel approved the Fresno-Bakersfield route for construction last summer.

The Surface Transportation Board's Dec. 12 ruling stated that lawsuits filed in state courts under CEQA — and the ability of state judges to issue injunctions to halt work on the project — are barred by a law that gives the federal board exclusive jurisdiction over rail transportation in the U.S. If state courts had the authority to enforce CEQA, the ruling said, they could “deny or significantly delay an entity's right to construct a line that the (Surface Transportation) Board has specifically authorized, thus impinging upon the board's exclusive jurisdiction over rail transportation.”

Hanford homeowner Aaron Fukuda is knee-deep in some of the legal challenges over the statewide rail project. He is one of the plaintiffs — along with farmer John Tos and the Kings County Board of Supervisors — suing the California High-Speed Rail Authority over its compliance with Proposition 1A, a 2008 bond measure. He's also co-chairman of Citizens for California High-Speed Rail Accountability, which with Kings County and the Kings County Farm Bureau is suing the authority under CEQA over the Fresno-Bakersfield rail segment.

“We have to make sure we protect our rights through CEQA,” he said Monday. Fukuda and others assert that the authority's environmental assessment of the Fresno-Bakersfield route fails to fully comply with the state law, and he believes state courts need to have the ability to enforce the law by stopping the project if warranted.

“I don't think CEQA is mean to stop the project. ... But it provides the measures that give us all a layer of protection,” Fukuda added. “Our optimism is that the court will see that this project is subject to state and local jurisdiction and CEQA. That's the way business is done.”

In the petition to the Ninth Circuit, Oakland attorney Stuart Flashman representing the Kings County interests argues that the Surface Transportation Board's ruling “violates petitioners' constitutional right to seek redress of grievances” in the U.S. and California constitutions, “violates the separation of powers doctrine” under both constitutions, and “violates the Tenth Amendment of the federal Constitution by interfering with the sovereign powers of the state of California.”

The [Surface Transportation Board](#) got involved with California's rail efforts in 2013, after Rep. Jeff Denham, R-Turlock

— an outspoken critic of the state project — insisted that the state rail board seek the federal panel’s input about the issue of jurisdiction. In a series of rulings, the board agreed that it has jurisdiction over California’s project, and has since approved the first two construction sections in the San Joaquin Valley.

“The irony is that the same parties who sought to have the Surface Transportation Board take over our program in 2013 are now objecting and complaining about what the outcomes are,” said Lisa Marie Alley, a spokeswoman for the California High-Speed Rail Authority. “This lawsuit has nothing to do with environmental protection; it’s just that they don’t like the result of what federal jurisdiction means.”

The California Environmental Quality Act is generally acknowledged to have more stringent requirements and greater enforcement teeth than the federal [National Environmental Policy Act](#). Because the statewide rail project — intended to link San Francisco and Los Angeles by way of the San Joaquin Valley with electric-powered trains capable of speeds up to 220 mph — is being jointly overseen by both the state rail authority and the Federal Railroad Administration, the environmental certification process is being done to comply with both sets of laws.

But the state, fearing that lawsuits could result in court orders to delay construction on the Fresno-Bakersfield section of the line, asked the Surface Transportation Board for a declaration that state courts could not issue injunctions against the project because it had already received federal approval.

Construction is slated to begin soon on the first construction segment approved by the state and federal agencies — a 29-mile stretch from Fresno to Madera. The state recently awarded a contract for the second construction section from Fresno to the Tulare-Kern county line.

The state has about \$6 billion available in federal and state money for rail segments from Madera to the northeast fringe of Bakersfield. The cost of the San Francisco-Los Angeles stages of the project are forecast to cost about \$68 billion by the time full operations would begin in the late 2020s.

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