

Bakersfield developers settle high-speed-rail lawsuit

By Tim Sheehan

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An artist's depiction of a California high-speed rail train

SPECIAL TO THE BEE

- Still pending

Despite the settlement between Coffee-Brimhall LLC and the California High-Speed Rail Authority, more lawsuits are still pending over the state's high-speed train project:

- Five other lawsuits filed in 2014 in Sacramento County Superior Court alleging violations of the California Environmental Quality Act in the approval of the Fresno-Bakersfield portion of the rail route. Those plaintiffs are Dignity Health, which operates a hospital in Bakersfield along the rail route; the First Free Will Baptist Church in Bakersfield; Kern County; the city of Shafter; and Kings County, the Kings County Farm Bureau and Citizens for California High-Speed Rail Accountability.
- A 2011 lawsuit by John Tos, Aaron Fukuda and Kings County in Sacramento County Superior Court over compliance of the state high-speed train project with Proposition 1A.
- A 2014 lawsuit by Transportation Solutions Defense and Education Fund (TRANSDEF) in Fresno County Superior Court challenging a ruling by the state Air Resources Board allowing cap-and-trade funds from the sale of carbon emission credits to be used for high-speed rail.
- A 2015 petition filed by Kings and Kern counties, TRANSDEF and several other organizations with the U.S. Ninth Circuit Court of Appeals seeking to overturn a December ruling by the U.S. Surface Transportation Board. It determined that federal jurisdiction over the high-speed rail project bars state court judges from enforcing the California Environmental Quality Act.

About the settlement:

- Coffee-Brimhall LLC, developer of a proposed retail/commercial/residential project in Bakersfield, dismisses its California Environmental Quality Act lawsuit against the California High-Speed Rail Authority over its Fresno-Bakersfield route.
- The rail authority agrees to consider and analyze routes that steer clear of Coffee-Brimhall's project site in west-central Bakersfield.
- The development company agrees to no future legal or administrative challenges unless the state chooses a route that either crosses or comes within a half-mile of its project site.
- Out of seven CEQA lawsuits challenging the Fresno-Bakersfield route, this is the second one to be settled. The first was by the city of Bakersfield.

A Southern California land-development company has agreed to drop its environmental lawsuit against the [California High-Speed Rail Authority](#) — the second settlement among seven challenges over the Fresno-Bakersfield segment of the statewide bullet-train route.

Coffee-Brimhall LLC, which owns land in west-central Bakersfield for [a proposed retail/commercial/residential development called Bakersfield Commons](#), sued the rail authority last year in Sacramento County Superior Court. The suit alleged that the state's approval and environmental certification of the 114-mile Fresno-Bakersfield route violated the California Environmental Quality Act. The proposed route approved last May runs through the Bakersfield Commons site [at the intersection of Coffee and Brimhall roads](#), and the development firm "believes the Bakersfield hybrid (rail) alignment would severely impact Coffee-Brimhall's plans to develop the parcels."

The [settlement](#) was reached early last week by the development company and the rail agency and filed with the court on Feb. 18; on Thursday, attorneys for Coffee-Brimhall filed their request for a judge to dismiss the case. The settlement was announced Tuesday.

In the settlement, the rail authority agreed "to analyze, and consider in good faith one or more (high-speed train) alignments that do not traverse" the Coffee-Brimhall property by producing a future environmental analysis that will also include the already-approved route. The agreement also calls for those alternative alignments to steer clear of the Coffee-Brimhall property by at least a half-mile.

The condition for a new analysis of route alternatives through Bakersfield is similar to one included in a December settlement between the rail authority and the city of Bakersfield.

For its part of the settlement, Coffee-Brimhall agreed that it won't file a legal challenge in federal court, or in any other legal or administrative forum, unless the state approves any high-speed rail line or station site that crosses or comes within a half-mile of its Bakersfield Commons property.

In the agreement, the development firm acknowledged that the final choice of a high-speed train route through Bakersfield may require a sign-off by a number of federal agencies, including the Surface Transportation Board, Federal Railroad Administration, U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency "over which the (state rail agency) has no control."

Still pending are five other CEQA lawsuits against the rail authority over the Fresno-Bakersfield section of the route. The fate of those environmental cases, however, remains in something of a legal limbo after [a December ruling by the federal Surface Transportation Board](#) declaring that its approval of the Fresno-Bakersfield line effectively barred state courts from enforcing the California environmental law, including issuing any injunctions or court orders halting work on the segment. Kings and Kern counties and a collection of groups opposing the high-speed rail project have asked the [U.S. Ninth Circuit Court of Appeals](#) to overturn the federal board's ruling.

Coffee-Brimhall agreed in the settlement that it will withdraw from a [petition asking the Surface Transportation Board](#) to reconsider its ruling.

The agreement is considered a judgment enforceable by Sacramento County Superior Court Judge Michael Kenny, to whom all of the CEQA lawsuits over the Fresno-Bakersfield rail segment have been assigned.

Coffee-Brimhall LLC is incorporated in Delaware with a business address in the Los Angeles County city of South Gate. Its members include brothers Richard and Steven Roth, whose other holdings include World Oil Corp., Pan Pacific Petroleum Co. Inc., Ribost Land Co. LLC, Roth Retail Holding Co. LLC., Roth Shopping Center Holding Co. LLC and Coffee-Rosedale LLC.

The Fresno-Bakersfield section is the second piece of the statewide bullet-train system for which the rail authority has certified environmental impact reports and approved a route. The analysis for the first section between Fresno and Merced was certified and a route approved in 2012. A contractor has been doing preliminary work in anticipation of major construction in the Fresno-Madera areas, and a contractor was hired earlier this year to design and build the second construction section from south of Fresno to the Tulare-Kern county line.

Still more litigation over the rail project remains to be decided. Kings County and two of its residents are suing the rail authority alleging that the 520-mile line linking San Francisco and Los Angeles will not be able to live up to the operational or financial requirements of Proposition 1A, the \$9.9 billion high-speed rail bond measure approved by California voters in 2008. That case, also being heard by Kenny in Sacramento, is expected to be tried by the judge this year.

Contact Tim Sheehan: tsheehan@fresnobee.com, (559) 441-6319 or [@TimSheehanNews](https://twitter.com/TimSheehanNews) on Twitter.

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