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OEA

SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35724

California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal.

Decided: April 9, 2013

**LEAD AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Adoption Recommendation and Recirculation of Final Environmental Impact Statement.

**SUMMARY:** In accordance with Surface Transportation Board (Board) procedures for complying with the National Environmental Policy Act (NEPA) at 49 C.F.R. Part 1105, and consistent with the regulations of the Council on Environmental Quality (CEQ) for implementing NEPA at 40 C.F.R. § 1506.3, the Board’s Office of Environmental Analysis (OEA) is recommending that the Board adopt a Final Environmental Impact Statement (Final EIS) issued by the Federal Railroad Administration (FRA) and California High-Speed Rail Authority (Authority). This Final EIS is titled “California High-Speed Train: Merced to Fresno Section, Final Project Environmental Impact Report/Environmental Impact Statement.”

The Final EIS assesses the potential environmental impacts of constructing and operating a high-speed passenger train (HST) between Merced and Fresno in the San Joaquin Valley, California. OEA has independently reviewed the Final EIS and agrees with its analysis and conclusions. OEA is issuing this notice to advise the public and interested agencies that, should the Board find jurisdiction over the Authority’s project, OEA is recommending, in any decision ruling on the request for construction authority, that the Board adopt the Final EIS issued by FRA and the Authority to satisfy the Board’s NEPA obligations.

**FOR FURTHER INFORMATION CONTACT:** Dave Navecky, Office of Environmental Analysis, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001, 202-245-0294. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

If you wish to file comments on the proposed adoption of the Final EIS by the Board, please send an **original and one copy** to Surface Transportation Board at the address above to the attention of Dave Navecky. Environmental comments may also be filed electronically on the Board’s website, [www.stb.dot.gov](http://www.stb.dot.gov), by clicking on the “E-FILING” link. **Please refer to Docket No. FD 35724 in all correspondence, including e-filings, addressed to the Board.** Comments may be submitted to OEA no later than May 20, 2013.

## **SUPPLEMENTARY INFORMATION:**

**Background:** By petition filed on March 27, 2013, the Authority seeks authority to construct a HST rail line between Merced and Fresno, California (Merced to Fresno HST Section). Concurrently on March 27, 2013, the Authority filed a Motion to Dismiss its Petition for Exemption asserting that the Merced to Fresno HST Section does not require the Board's construction approval under 49 U.S.C. § 10901.<sup>1</sup>

The Merced to Fresno HST Section would be the first of nine sections of the planned California HST system, which would provide intercity, high-speed passenger rail service over more than 800 miles throughout California and connect the major population centers of the state. The HST system would be an electric-powered train system with automated train controls and would operate at up to 220 miles per hour over a fully grade-separated and dedicated rail line. The Merced to Fresno HST Section would include passenger stations in the cities of Merced and Fresno (i.e., this section's termini), approximately 65 miles of double-tracked mainline, and four tracks at the two stations (i.e., two through tracks and two station tracks to load and unload passengers).

According to the Authority, it filed a motion to dismiss its request for authority from the Board because it does not have any contracts or any other arrangements in place at this time that would come within the Board's jurisdiction and require Board authority. Specifically, the Authority claims that the Board lacks jurisdiction because the Merced to Fresno HST Section would be located entirely within the State of California, would provide only intrastate passenger rail service, and would not be constructed or operated as part of the interstate rail network under 49 U.S.C. § 10501(a)(2)(A). The Authority requests that the Board expedite its consideration of the Petition for Exemption and either grant it, or dismiss it pursuant to the Motion to Dismiss, effective by June 17, 2013 so that the Authority can award contracts for the design and construction of a 29-mile sub-section of the project in the summer of 2013.

Pending the Board's decisions on the Authority's Petition for Exemption and Motion to Dismiss, and considering the Authority's request for an expedited decision, OEA is issuing this notice to advise the public and interested agencies that OEA is recommending that, in any decision in which the Board might determine that it has jurisdiction to rule on the Authority's proposal, the Board adopt the Final EIS issued by FRA and the Authority for the construction of the Merced to Fresno HST Section to satisfy the Board's NEPA obligations. Issuance of this notice now does not prejudice the Board's review of the Authority's petition or motion.

**Previous Environmental Reviews:** For the Merced to Fresno HST Section, FRA and the Authority were joint lead agencies for Federal reviews under NEPA, and the Authority was lead agency for state reviews under the California Environmental Quality Act (CEQA). The U.S.

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<sup>1</sup> The Authority's Petition for Exemption and Motion to Dismiss are available on the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov) (click on "Filings" under "Quick Links," then search by Docket # "FD" and "35724").

Army Corps of Engineers (USACE) and the Bureau of Reclamation<sup>2</sup> also served as cooperating agencies in the Federal environmental review of the project. To comply with NEPA and CEQA, FRA and the Authority jointly began the environmental review process for the Merced to Fresno HST Section in 2009 and issued a Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) in August 2011.<sup>3</sup> Considering information in and comments received on the Draft EIS, FRA and the Authority issued a Final EIS in April 2012. The Final EIS identified the Authority's preferred build alternative. FRA and the USACE concurred with the Authority's preferred build alternative.

FRA issued a Record of Decision (ROD) under NEPA on September 18, 2012. Based on an analysis of potential project impacts, required mitigation measures, and substantive agency and public comments, FRA approved the preferred build alternative in the Final EIS that includes the north-south Hybrid Alternative, and the Downtown Merced Station and Downtown Fresno Mariposa Street Station alternatives.

**Board Environmental Review:** CEQ's regulations allow Federal agencies, such as the Board, to adopt the environmental documents prepared by another Federal agency when the proposed actions are "substantially the same" and the adopting agency has concluded that the initial statement meets the standards for an adequate statement under CEQ's regulations (40 C.F.R. § 1506.3). Furthermore, the CEQ regulations state that when actions are substantially the same, "the agency adopting the agency's statement is not required to recirculate it except as a final statement."

OEA has conducted an independent review of the 2012 Final EIS for the purpose of determining whether the Board could adopt it under 40 C.F.R. § 1506.3. OEA concludes that (1) the proposed construction specified in the Authority's Petition for Exemption is substantially the same as that described in the 2012 Final EIS; (2) the Final EIS adequately assessed the potential environmental impacts associated with the proposed Merced to Fresno HST Section and meets the standards of CEQ's NEPA regulations; and (3) to satisfy its NEPA obligations, the Board could adopt the 2012 Final EIS in any decision finding jurisdiction over the project and ruling on the Authority's request for construction authority.

If the Board finds jurisdiction to rule on the Authority's proposal, in order to comply with its obligations under Section 106 of the National Historic Preservation Act (16 U.S.C. § 470 et seq.), OEA, on behalf of the Board, would also join the existing Memorandum of Agreement (MOA), signed and executed by FRA, Authority, Advisory Council on Historic Preservation, and California Historic Preservation Officer. The MOA describes the roles and responsibilities of the

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<sup>2</sup> The Bureau of Reclamation is a cooperating agency but does not have jurisdiction over a permit or approval for this section of the HST system.

<sup>3</sup> The preparation of this single environmental review document, which covers both Federal and state environmental requirements, is consistent with CEQ regulations at 40 C.F.R. § 1506.2. The EIS/EIR will be referred to in this notice as an EIS because, should the Board assert jurisdiction over this project, NEPA would be triggered.

parties and would allow the Board to take into account the potential effect of the Board's actions on historic properties pursuant to the requirements of Section 106.

In accordance with the U.S. Environmental Protection Agency's (EPA) regulations (40 C.F.R. § 1506.3(b)) and guidelines (EIS Filing System Guidance, 77 Fed. Reg. 51530-51532) regarding the filings of adopted EISs, OEA has provided EPA with this notice of Final EIS adoption recommendation and electronically filed the recirculated Final EIS with EPA. EPA will publish a notice of availability of the recirculated Final EIS in the Federal Register consistent with its usual practices. Because of the multi-volume size of the Final EIS and its continued availability in the libraries of the affected communities and the Authority's Web site, OEA is not republishing the document. This would be unduly costly, would defeat CEQ's goals of reducing paperwork and duplication effort, and would be of little additional value to other agencies or the public. The Final EIS is available on the Authority's Web site at [www.cahighspeedrail.ca.gov/final-eir-m-f.aspx](http://www.cahighspeedrail.ca.gov/final-eir-m-f.aspx), and at local libraries in the following California communities: Atwater, Chowchilla, Fresno, Le Grand, Los Banos, Madera, and Merced. OEA has mailed this notification to the recipients of the Final EIS at the time it was issued by FRA and the Authority in April 2012, as well as the parties of record to the Board's proceedings. Comments on the Board's proposed adoption of the Final EIS may be submitted to Dave Navecky at the address noted above, or filed electronically on the Board's Web site, no later than May 20, 2013.

If the Board finds jurisdiction over the project, the final stage of the environmental review process under NEPA would be the issuance of the Board's final decision on the Petition for Exemption (i.e., Record of Decision). This Board decision would describe the agency's decision on whether to authorize the Authority's proposed construction, and whether it adopts OEA's recommendations, including OEA's recommendation to formally adopt the Final EIS. In addition, the Board decision would take into account any substantive comments received in response to today's notice of proposed Final EIS adoption. Under the timelines included in CEQ's regulations (40 C.F.R. § 1506.10), the Board's final decision cannot be issued any earlier than thirty days after EPA publishes its Federal Register notice notifying the public of OEA's adoption recommendation and availability of the recirculated Final EIS (Note: OEA anticipates that EPA will publish this notice of Final EIS adoption in the Federal Register on Friday, April 19, 2013). Any final decision issued by the Board finding jurisdiction and ruling on the Authority's proposal would be consistent with 40 C.F.R. § 1505.2 and the Board's environmental rules at 49 C.F.R. Part 1105.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.