



community report

December 16, 2014

SEEKING TO AVOID ENVIRONMENTAL ACCOUNTABILITY, THE CALIFORNIA HSR AUTHORITY MAKES A "MESS"

At the request of the California High-Speed Rail Authority, the Federal Surface Transportation Board, or STB, has asserted jurisdiction over the California High-Speed Rail project, even though the California project is totally an intra-state project with no ability to serve any out of state location. Last week, again responding to a request from the California High-Speed Rail Authority, the STB issued a decision declaring that California's premier environmental protection law, the California Environmental Quality Act (or CEQA), does not apply to the California high-speed rail project. According to this STB decision, CEQA is "preempted." Legal observers expect that a court battle will ensue over federal preemption versus states' rights.

This was a 2-1 decision at the STB. Two federal officials, in other words, are trying to tell the entire California State Legislature - and the voters of California - that their opinion doesn't count. Again, it can't be stressed enough that this decision eliminating environmental accountability has come in response to a request from the California High-Speed Rail Authority. The Authority is unwilling to subject its mammoth project to the same environmental review procedures that every developer and local government has to go through, with respect to projects that would have many fewer impacts than the proposed HSR project. If you would like to read the full STB decision, go to:

<http://www.stb.dot.gov/decisions/readingroom.nsf/WEBUNID18247A0EE7E3897FF85257DAC007CCF08?OpenDocument>

. CC-HSR Board Member Kathy Hamilton regularly covers high-speed rail issues in her online columns. Go to the following link for her "take" on what the STB decision is all about.

http://www.examiner.com/article/surface-transportation-board-rules-no-ceqa-needed-for-rail-project?cid=db_articles

Before Continuing Our Coverage, Here Is A Pitch:

Since 2008, CC-HSR has been working through litigation, lobbying, and public outreach to make sure that the state's proposed High-Speed Rail project does not bring devastating impacts to the San Francisco Peninsula, or to other parts of California. Return go to our web site **www.cc-hsr.org** to make a donation to support our work. CC-HSR is totally supported by the community, and this latest decision by the STB, and the anticipated approval in January of the proposed Caltrain "Pre-HSR" project, means that we will probably have to be back in court very soon. We truly need your help!

AND, please Know This: WE APPRECIATE Your Support!

cc-hsr community report

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Continuing On ...

Naturally, this recent STB decision cannot be called anything but “bad news” for those concerned about the possible environmental impacts of the state’s out of control high-speed train project. However, the impact of the decision is very unclear, and this effort by the High-Speed Rail Authority to outflank the California courts, and the California voters, will almost certainly not work out in the long run - at least not the way the Authority thinks it will.

The STB decision is anything but a “free pass” for the High-Speed Rail Authority, and will not, in the end, insulate the Authority’s poorly designed and mismanaged project from being held accountable to the public for its adverse environmental impacts.

That’s the “good news” perspective, if there is anything “good” about the Authority’s effort to avoid environmental accountability. The most immediate effect of the STB ruling is to create a big legal “mess” that will require lots of time (and money) to unravel. By precipitating such a horrible decision at the federal level, the Authority continues its unblemished record of abject mismanagement of a project that the voters once thought was truly promising.

Here is just a partial list of all the legal entanglements that the Authority has now created by its efforts to escape from state mandated environmental review of the Authority’s proposed high-speed train project:

Proposition 1A, the High-Speed Train Bond Act, specifically references CEQA, and requires CEQA compliance before Bond Act money may be spent. If the Authority uses the STB decision to avoid CEQA requirements, the result may be that the Authority will become ineligible for any Bond Act funds. The Authority’s project is already vastly under funded. This could mean the end of the project. Proposition 1A not only references CEQA. It says the Authority must obtain “all required environmental clearances.” That includes **compliance with the National Environmental Policy Act (or NEPA)**. The Authority has NOT complied with NEPA for the so-called “Initial Operating Segment” of the project, and it will probably take the Authority several years to obtain such NEPA compliance.

Seven CEQA lawsuits have been filed against the Authority, challenging the inadequate environmental review carried out for work proposed in the Central Valley. Undoubtedly, the Authority’s appeal to the STB was intended to stop those lawsuits, so that the Authority could avoid having to do the CEQA compliance that these seven lawsuits are calling for (and that CEQA does in fact require). The result of this gambit by the Authority, however, may not be the result it was looking for (see the next two items in this list). In addition, the attorneys for the parties who have filed the seven lawsuits say that the lawsuits will proceed despite the STB ruling, since there are non-CEQA issues to litigate. Furthermore (see the next two items on this list) it is very unclear that two members of the STB can trump the California courts, and “preempt” a California state law that has been upheld by a California appellate court against exactly the kind of “preemption” claim that the Authority and the STB have asserted. The STB, in other words, probably can’t trump the California courts, and those seven lawsuits will proceed despite the STB “preemption” decision.

In **the Atherton case** (in which CC-HSR was a party), the Third District Court of Appeal ruled that CEQA was NOT preempted, and that the High-Speed Rail Authority had to comply

cc-hsr community report

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with CEQA. This was a major victory for those wanting to hold the Authority accountable for the environmental impacts of its proposed project. Again, the court REJECTED the claim of preemption. That's currently California law on this subject. The seven pending lawsuits are pending in the California courts. The STB decision isn't precedent; the appellate court decision is.

There was ***another California Appellate Court case (the Eel River case)*** that held that when railroad projects were subject to STB oversight the railroads involved did not have to comply with CEQA, and that CEQA was preempted. However, several days prior to the STB decision, the California Supreme Court took action to review that case, and the decision that CEQA is preempted has become null and void. There is no state law precedent that would allow the High-Speed Rail Authority to declare itself "exempt" from CEQA requirements. Nothing except that recent STB decision. Query, again, whether two members of the STB can really trump the California courts, on a question about the applicability of a California law.

In conclusion, the STB decision makes a "legal mess" of what ought to be a pretty straightforward legal requirement. In California, any governmental agency that plans to carry out a project that "might" have adverse environmental impacts has to do a proper environmental review. That's what CEQA says!

What is the Authority so afraid of? Could it be that they know that their proposed project does not meet the environmental tests that every other developer and government agency has to meet?

Wait a minute! Wasn't this high-speed train project supposed to make the environment better? Apparently, the Authority doesn't want the public - or the courts - to subject that claim to any real review.

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Thank you again for your support and assistance for our work!

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