

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35929

PENINSULA CORRIDOR JOINT POWERS BOARD—PETITION FOR  
DECLARATORY ORDER

Digest:<sup>1</sup> The Board concludes that 49 U.S.C. § 10501(b) does not preempt the application of the California Environmental Quality Act to the electrification of the Peninsula Corridor Joint Powers Board's rail line between San Jose and San Francisco, Cal.

Decided: July 2, 2015

By petition filed on May 19, 2015, the Peninsula Corridor Joint Powers Board (Caltrain), operator of the Caltrain commuter rail service between San Jose and San Francisco, Cal., seeks a declaratory order confirming that the requirements of the California Environmental Quality Act (CEQA), as applied to Caltrain, are preempted under 49 U.S.C. § 10501(b). Replies to Caltrain's petition were filed by Union Pacific Railroad Company (UP), the Alliance for a Cleaner Tomorrow (ACT), and jointly by the Town of Atherton, Community Coalition on High-Speed Rail, and Transportation Solutions Defense and Education Fund (Atherton Parties).

The request for a declaratory order will be denied for the reasons discussed below.

BACKGROUND

Caltrain, a public agency, states that it is a rail carrier subject to the Board's jurisdiction. Caltrain and its managing agency, the San Mateo County Transit District (Samtrans), acquired the rail line between San Jose and San Francisco from Southern Pacific Transportation Company (SP) to conduct passenger commuter rail service on the San Francisco Peninsula. Peninsula Corridor Joint Powers Bd.—Acquis. Exemption—S. Pac. Transp. Co. (Caltrain Acquisition), FD 31980 (ICC served Jan. 17, 1992). Caltrain and Samtrans then granted trackage rights back to SP for freight and intercity passenger operations on the line. S. Pac. Transp. Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Bd., FD 31983 (ICC served Jan. 17, 1992). Caltrain states that, since it acquired the line, SP and its successor, UP, have operated freight service on the line.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Caltrain seeks to electrify its line, a project known as the Peninsula Corridor Electrification Project (Project). The Project “proposes to install 25kv electrical lines over the line and utilize Electrical Multi-Units . . . in providing passenger service.”<sup>2</sup> Pursuant to CEQA, Caltrain prepared and certified an Environmental Impact Report (EIR) for the Project but states that it reserved its right to assert federal preemption should legal challenges to the EIR arise.<sup>3</sup>

The Atherton Parties have filed a lawsuit challenging Caltrain’s compliance with CEQA with respect to the Project in state court. The litigants seek injunctive relief, which Caltrain asserts would interfere with the improvement and operation of its line if granted. Caltrain argues that its improvement and operation of its line are under the Board’s exclusive jurisdiction, and thus, the application of CEQA, including its injunctive remedies, is preempted by 49 U.S.C. § 10501(b).

### PRELIMINARY MATTER

ACT and the Atherton Parties have requested that the Board extend the time for filing replies to Caltrain’s petition. As we are able to decide this matter based on the record before us, the requests for an extended reply period will be denied.

### DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to terminate controversy or remove uncertainty. We instituted a proceeding to consider whether, and the extent to which, CEQA is preempted with regard to the Project and provided an opportunity for interested persons to file replies.

Under 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carriers (1) between a place in a state and a place in another state, and (2) between a place in a state and another place in the same state, as long as that intrastate transportation is carried out as “part of the interstate rail network.” See DesertXpress Enters., LLC—Pet. For Declaratory Order, FD 34914 (STB served May 7, 2010). The Board’s jurisdiction over “transportation by rail carriers” is “exclusive” and “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b). Under 49 U.S.C. § 10501(c)(2)(A), however, the Board does not have jurisdiction over “mass transportation provided by a local government authority,” a term that includes commuter services. See N.J. Ass’n of R.R. Passengers—Pet. for Declaratory Order—Princeton Branch (Princeton Branch), FD 35745 (STB served July 25, 2014).

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<sup>2</sup> Pet. 4.

<sup>3</sup> See Pet., Ex. 5 (Peninsula Corridor Electrification Project Final EIR at 1-14), Ex. 6 (Caltrain Board of Directors, Resolution Nos. 2015-03 & 2015-04).

Caltrain asserts that § 10501(b) preempts the application of CEQA to the Project because it is a rail carrier by virtue of its acquisition of a rail line subject to the Board's jurisdiction. While Caltrain became a rail carrier subject to the Board's jurisdiction as a result of its acquisition of SP's rail line, Caltrain's Project is not subject to the Board's jurisdiction, and therefore, federal preemption does not apply.

Caltrain is a public agency created under California law,<sup>4</sup> and therefore, is a "local government authority" as defined under 49 U.S.C. § 5302. Moreover, Caltrain's electrification project is part of its provision of "mass transportation." Mass transportation means "transportation services described in [49 U.S.C. § 5302] that are provided by rail." 49 U.S.C. § 10501(c)(1)(B). The only type of transportation defined under 49 U.S.C. § 5302 is "public transportation," which includes (with some exceptions) "regular, continuing shared-ride surface transportation services that are open to the general public." 49 U.S.C. § 5302(14).<sup>5</sup> In creating the mass transportation exception under § 10501(c)(2)(A), Congress intended to specifically exclude "commuter passenger service" from this agency's jurisdiction. See Princeton Branch, slip op. at 4-5. Caltrain provides only commuter rail service on the line, including equipment and facilities used exclusively for its commuter rail service, and operations of this sort are excluded from Board jurisdiction. Id. at 6 (mass transportation often takes place over lines subject to the Board's jurisdiction and, in such situations, the Board does not have jurisdiction over the mass transportation services despite having jurisdiction over the line on which it runs).

Moreover, it appears that the Project is intended only to benefit Caltrain's commuter operations. Nothing in the record indicates that the Project is either for the benefit of, or would unreasonably interfere with, non-Caltrain rail operations on the line that are subject to the Board's jurisdiction. See Denver & Rio Grande Ry. Historical Found.—Pet. for Declaratory Order, FD 35496, slip op. at 5 (STB served Mar. 24, 2015) (finding that not all of a rail carrier's activities are inherently transportation falling under the Board's jurisdiction and thus covered under § 10501(b)), pet. for judicial review pending sub nom. Denver & Rio Grande Ry. Historical Found. v. STB, No. 15-1153 (D.C. Cir. filed May 26, 2015).

There is no indication that the Project would have potential impacts on UP's freight rail operations on the line. Thus, this case differs from North San Diego County Transit Development Board—Petition for Declaratory Order, FD 34111 (STB served Aug. 21, 2002),

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<sup>4</sup> See Pet., Ex. 2 (SP-Caltrain Trackage Rights Verified Notice of Exemption, Ex. 2 (Trackage Rights Agreement—Peninsula Main Line & Santa Clara/Lick Line at 1)); see also Caltrain Acquis., slip op. at 1.

<sup>5</sup> Prior to the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141, 126 Stat. 405 (2012), § 5302(a) expressly defined "mass transportation" as "public transportation," which in turn was defined as "transportation by a conveyance that provides regular and continuing general or special transportation to the public," with certain specified exceptions. MAP-21 § 20004 eliminated the definition of "mass transportation" from 49 U.S.C. § 5302 and amended the definition of "public transportation" to that shown in the text above. The MAP-21 amendments did not alter §10501(c)(2)(A) or the fundamental understanding of what constitutes mass transportation.

where the Board found that § 10501(b) preempted state and local permitting requirements applied to a commuter rail's construction of a passing track, because the permitting requirements at issue would affect freight rail operations as well as commuter rail operations. Nor is there any evidence that UP's rail operations would be adversely affected by any conditions imposed on the Project pursuant to CEQA.<sup>6</sup>

While Caltrain states that the Project would make its line "compatible with future implementation of the proposed California High Speed Rail project,"<sup>7</sup> it makes clear that the Project is separate and distinct from future high-speed rail operations of the California High Speed Rail Authority (the Authority).<sup>8</sup> Caltrain states that "the electrification of the line has been the subject of planning efforts that date back almost two decades."<sup>9</sup> Moreover, as ACT notes, Caltrain's EIR explains that several other improvements and upgrades are required before the line could support high-speed trains.<sup>10</sup>

Thus, based on the record here, the Project is not rail transportation subject to the Board's jurisdiction under § 10501. The Project will solely enhance Caltrain's commuter rail operations, which constitute mass transportation by a local government agency that is not subject to Board jurisdiction under § 10501(c)(2)(A). We conclude, therefore, that CEQA is not preempted with respect to the Project.

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<sup>6</sup> In its reply, UP takes no position on the merits of the petition. Rather, it requests that the Board clarify that "any conditions imposed on [the Project] pursuant to CEQA must not interfere with [UP's] operations because the application of CEQA to interstate rail operations is clearly preempted" by § 10501(b). UP Reply 4. However, UP does not point to any such conditions that have been imposed. Therefore, it would be premature for the Board to address UP's request in our decision here. In the event that UP identifies any such conditions, it may seek relief before this agency at that time.

<sup>7</sup> Pet. 4.

<sup>8</sup> Pet. 8.

<sup>9</sup> Id. See also ACT Reply, Attachment A (Caltrain's Final EIR Executive Summary and Project Description) ES-3, ES-6 (stating that the Project is separate from the Authority's high-speed rail project and has independent utility).

<sup>10</sup> ACT Reply 3-4.

It is ordered:

1. The Atherton Parties' and ACT's requests for an extension of the reply period are denied.
2. Caltrain's petition for a declaratory order is denied.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.