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**Re: Fresno to Bakersfield Section California High-Speed Train (HST) Final Project
Environmental Impact Report/Environmental Impact Statement (FEIR/FEIS)**

**California High-Speed Rail Authority—Construction Exemption—In Fresno,
Kings, Tulare & Kern Counties, Cal.,
STB Finance Docket No. 35724 (Sub No. 1)**

Ladies and Gentlemen:

BNSF Railway Company (“BNSF”) submits these comments in response to the April 18, 2014 Final Environmental Report/ Final Environmental Impact Statement (“FEIR/FEIS”) on the Fresno-Bakersfield segment to bring to the attention of the California High Speed Rail Authority (“CHSRA”), Federal Railroad Administration (“FRA”), and the Surface Transportation Board (“STB”) several outstanding concerns that BNSF has with respect to that segment of the proposed CHSRA line. BNSF notes that in its April 18, 2014 announcement of the release of the FEIR/FEIS, CHSRA invited public comments on that document at a May 6, 2014 public meeting. BNSF offers these written comments in light of that invitation and to bring to the attention of CHSRA, FRA and STB certain concerns discussed here.

BNSF’s interest in this matter is substantial because BNSF currently operates a partially double-tracked freight rail line between Fresno and Bakersfield used by an average of more than

Mr. Mark McLoughlin
Mr. David Valenstein
Ms. Cynthia Brown
May 6, 2014
Page 2

40 trains/day. BNSF's concerns are raised in the context of the fact that it appears the high speed rail alignment recommended as the Preferred Alternative in the FEIR/FEIS would run adjacent to the BNSF right-of-way for a substantial percentage of the 114 miles of that line between Fresno and Bakersfield. In fact, the Preferred Alternative is drawn largely from an alternative identified in the FEIR/FEIS as the "BNSF Alternative" and the project is designed to "follow[] existing transportation corridors to the extent feasible." See FEIR/FEIS at S-15.

The implications of locating the CHSRA line close to BNSF's line are considerable and take a variety of forms, including impacts to BNSF's ability to maintain and use all of its current right-of-way to support freight rail service; its ability to construct spurs to serve current and new industries; electromagnetic interference risks with signals and Positive Train Control Systems ("PTC"); and height clearance issues, as discussed further below. BNSF has discussed these and other issues with CHSRA at meetings held on several occasions over a course of the past few years, most recently within the past two weeks. However, to date BNSF's questions have not been answered, leaving many uncertainties about construction and operational impacts of the proposed high speed line to BNSF and its customers. BNSF understands that in many cases further engineering design and analysis by CHSRA and its consultants is required before a full analysis of impacts to BNSF can be ascertained. At the same time, CHSRA has yet to inform BNSF of the nature and degree of impacts that may result from the construction and operation of the proposed high-speed rail line, even though those impacts are likely to be considerable.

As a result, the parties have been unable to enter into substantive discussions regarding a further memorandum of understanding ("MOU") that would define how the two rail lines might co-exist with a minimal amount of disturbance to BNSF's current and future plans and operations. CHSRA has acknowledged that it will need an MOU with BNSF for its project to proceed.¹ While BNSF is willing to discuss an MOU once the implications of the CHSRA system are more fully identified and assessed, that time has not yet arrived.

Further, at least to the extent of assessing impacts to BNSF, the FEIR/FEIS is far from a final or complete document. In fact, the absence of a more detailed assessment of impacts to BNSF's freight rail service underscores BNSF's multiple remaining concerns, as discussed further in the context of several specific issues described below:

(1) The FEIR/FEIS does not state where there will be highway-grade separations. CHSRA only recently provided BNSF with a list of locations for proposed grade separations, but the impacts of these have not been assessed.

(2) CHSRA informed BNSF recently that it would likely pass over our property in two places between Fresno to Bakersfield, but they did not provide further information. However, an Appendix to the Final EIS identifies railroad crossings for the various alternatives, and it appears that in fact the proposed high-speed rail line will cross over BNSF in multiple places, many more than two locations. See FEIR/FEIS Appendix 2-B.

¹ Draft 2014 Business Plan at 70.

Mr. Mark McLoughlin
Mr. David Valenstein
Ms. Cynthia Brown
May 6, 2014
Page 3

(3) CHSRA recently informed BNSF that it wants to relocate BNSF's right-of-way in three or four locations, but they did not provide detail. There is no agreement in place between BNSF and CHSRA contemplating such use of BNSF's property, and the FEIR/FEIS is notably deficient in addressing the issues and assessing impacts. For example, as part of the Preferred Alternative's route through Fresno, Kings, and Kern counties, the FEIR/FEIS states that BNSF railway tracks will need to be realigned. Specifically, at page 2-64, the EIS states that "[a]pproximately 5.5 miles of BNSF Railway tracks would be realigned ... to accommodate the HST alignment" through Fresno county. Likewise, the FEIR/FEIS states that "[a]pproximately 0.3 mile of BNSF Railway tracks would be realigned" in Kings county, and "[a]pproximately 4 miles of BNSF Railway tracks would be realigned" in Kern county. See FEIR/FEIS, at pages 2-64 to 2-65. The Alignment Plans provided in Volume III of the FEIR/FEIS appear to identify the location of some of these proposed realignments. See *e.g.*, Appendix 3.1-A, at 91. At no point, however, does the FEIR/FEIS in Chapters 3.2 or 3.13 (those relevant to land use and transportation impacts) assess the impacts associated with the proposed realignment, including the timing/procedures to re-locate the tracks and/or the impacts to BNSF's freight rail service as a result of re-location activities.

(4) The FEIR/FEIS has inconsistent information regarding whether the minimum separation between its track and BNSF is 47 feet or 29 feet. Further, the FEIR/FEIS indicates that "[a] 102-foot separation between the centerlines of BNSF Railway and HST tracks is provided wherever feasible and appropriate. In urban areas where a 102-foot separation could result in substantial displacement of businesses, homes, and infrastructure, the separation between the BNSF Railway and the HST was reduced." FEIR/FEIS, at 2-61. The FEIR/FEIS, however, provides no discussion in Chapters 3.2 or 3.13 (those relevant to land use and transportation impacts) regarding potential impacts to BNSF resulting from a minimal separation, including impacts to BNSF's maintenance, use, and operation of its right-of-way as a result of anything less than a 102-foot separation between the high-speed rail track and BNSF future tracks.

BNSF has explained to CHSRA that in measuring these distances, CHSRA must leave room for BNSF's anticipated future track, meaning that the distances must be measured to the centerline of any future BNSF track. BNSF requires clarification of the diagrams in the FEIR/FEIS that suggest CHSRA's current design plan measures the minimum distances to BNSF's existing track without leaving room for future track to meet increased freight capacity needs. See FEIR/FEIS at 2-62 and 2-63 (Figure 2-32 and Figure 2-33). Further, there are no agreements in place for use of BNSF right-of-way for safety fences, ditches or other improvements associated with the HST project.

(5) BNSF does not know, and CHSRA has not explained in the FEIR/FEIS or elsewhere, what will be done to mitigate the serious problem of potential electromagnetic interference with freight rail signals and PTC. The FEIR/FEIS acknowledges that the operation of the high-speed rail will interfere with signals on adjacent freight rail lines. The document, however, makes no mention of PTC. Clearly, further study is needed to determine the impact on PTC.

The FEIR/FEIS concludes that there will be no impact to freight rail signals, apparently because modifications will be made to freight assets to prevent interference. The FEIR/FEIS states that the "project design includes working with the engineering department of freight railroads that parallel the HST line to apply the standard design practices that a nonelectric railroad must

Mr. Mark McLoughlin
Mr. David Valenstein
Ms. Cynthia Brown
May 6, 2014
Page 4

use when electric power lines or an electric railroad are installed adjacent to its tracks.” See FEIR/FEIS at 3.5-20. These practices include “the application of suitable design provisions on the adjoining rail lines to prevent interference” and “often include replacement of specific track circuit types on the adjoining rail lines with other types developed for operation on or near electric railways or adjacent to parallel utility power lines.” See *id.* at 3.5-21. This issue has also been raised in a separate proceeding before the California Public Utilities Commission in comments filed jointly by BNSF and Union Pacific, but the issue should also be addressed in the FEIR/FEIS given the potential impacts to freight rail signal systems. See Joint Comments of Union Pacific Railroad Company and BNSF Railway Company to the Technical Panel Report, Public Utilities Commission of the State of California, Order Instituting Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing Safety Standards for the Use of 25kV Electric Lines to Power High Speed Trains, R.13-03-0009 (filed Jan. 31, 2014).

The electromagnetic interference issues impact a significant amount of BNSF track. The FEIR/FEIS states that the proposed high-speed rail line would be at grade and close to BNSF track for approximately 60 miles in the BNSF Alternative. The FEIR/FEIS, however, does not specify the number of miles of high-speed track that would be at-grade and adjacent to BNSF’s track for the Preferred Alternative. Further assessment is needed.

(6) The FEIR/FEIS states that the “HST alternatives would, in some locations, restrict the ability of ... BNSF to construct new spur lines for potential future customers.” *Id.* at 3.2-73. The FEIR/FEIS does not assess how many miles would be impacted or the effect of such restrictions. CHSRA recently provided BNSF with information showing at least 44 miles would be impacted, and the FEIR/FEIS stated that the BNSF Alternative would be at-grade for 76 miles. See *id.* at 2-36. Thus, the implications for freight rail service in the area could be considerable, but remain undefined and inadequately assessed in the FEIR/FEIS.

(7) BNSF understands that CHSRA may ask to purchase BNSF property that is not part of the right-of-way, but BNSF does not know which property CHSRA is considering for purchase. The FEIR/FEIS states that the “HST alternatives will require acquisition of existing freight rail property,” but it does not provide any details. FEIR/FEIS at 40-977. Nor does the FEIS/FEIR for either the Fresno-Bakersfield segment or the Merced-Fresno segment select a preferred alternative for the Heavy Maintenance Facility, even though CHSRA has stated that such a Facility will be located between Merced and Bakersfield. BNSF does not know how this may impact BNSF’s freight service or how CHSRA will access the Facility.

(8) The FEIR/FEIS states that existing California Amtrak San Joaquin service could operate over the proposed high-speed rail line but does not state where the line would connect with BNSF’s line (over which the California Amtrak San Joaquin service operates) or what portion of such service may operate over the high-speed rail lines. Because BNSF does not know the impact to the San Joaquin service, it does not know how changes to such service would affect BNSF’s available capacity. The FEIR/FEIS does not address this issue.

(9) BNSF does not know the extent to which construction would impact BNSF’s operations. CHSRA’s Draft 2014 Business Plan acknowledges that these costs could be significant. See CHSRA’s Draft 2014 Business Plan at 70 (“[T]here may be significant additional costs to the

Mr. Mark McLoughlin
Mr. David Valenstein
Ms. Cynthia Brown
May 6, 2014
Page 5

program associated with any disruptions to service experienced by BNSF ... during construction.”). The FEIR/FEIS acknowledges that “there is a possibility for disruption to or temporary delay of railroad operations. In particular, impacts to rail operations are expected to occur in downtown Fresno at several railroad crossing locations.” FEIR/FEIS 3.2-68. The FEIR/FEIS thus included “[a]voidance and minimization measures for the protection of freight and passenger rail.” *Id.* However, the FEIR/FEIS only included a design feature to “repair any structural damage to freight ... railways, and return any damaged sections to their original structural condition.” *See id.* 3.2-123. The FEIR/FEIS also contemplated “[i]f necessary, during construction, a ‘shoofly’ track would be constructed to allow existing train lines to bypass any areas closed for construction activities. Upon completion, tracks would be opened and repaired; or new mainline track would be constructed, and the ‘shoofly’ would be removed.” *See id.* There is insufficient information to assess the scope of these impacts and BNSF has not agreed to allow any of these kinds of impacts to its facilities and operations.

In raising these issues at this time, BNSF seeks to focus attention on some of the many matters that will require further environmental assessment before any construction commences on the Fresno-Bakersfield or any other segment of the CHSRA line, including the Fresno-Merced segment. We therefore look forward to receiving additional information from CHSRA so that the impacts of the proposed high-speed rail line to BNSF and its customers may be adequately evaluated, and so that BNSF may endeavor to reach an appropriate agreement with CHSRA, if possible. BNSF submits that further environmental impact study will be necessary when additional commercial and operations impacts of the proposed project are disclosed and looks forward to contributing to that process.

Thank you for your attention to these concerns.

Sincerely,



Richard E. Weicher,
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cc: Ms. Victoria Rutson, Surface Transportation Board
Mr. David Navecky, Surface Transportation Board
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 2014, I caused a copy of the foregoing to be served by first-class mail, postage prepaid, upon all parties of record in this case as follows:

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