

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

301265

ENTERED
Office of Proceedings
November 6, 2020
Part of
Public Record

Finance Docket No. 36433

NORTH COUNTY TRANSIT DISTRICT
PETITION FOR DECLARATORY ORDER

MOTION TO HOLD PROCEEDING IN ABEYANCE

The North County Transit District (“NCTD”) respectfully moves the Surface Transportation Board (“STB” or “Board”) to hold the above-captioned proceeding in abeyance for 120 days. The three key parties in this proceeding have been engaged in discussions regarding this dispute and believe further talks are warranted at this time to explore a resolution of the issues raised in this matter.

On August 28, 2020, NCTD filed a Verified Petition for Declaratory Order (“Petition”) to eliminate uncertainty pursuant to the STB’s authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321. First, NCTD asked that the Board find that 49 U.S.C. § 10501(b) of the ICC Termination Act of 1995 (“ICCTA”) preempts any attempts by the City of Del Mar (“Del Mar”) and the California Coastal Commission (“Commission”) to regulate NCTD’s rail line maintenance and any other upgrading activities in its rail right-of-way pursuant to the state and local coastal permitting regime in California. Second, NCTD sought a declaratory order that an application of the CZMA Federal Consistency Review by the Commission when a federal action is involved to rail

maintenance and upgrading projects in the NCTD right-of-way could not possibly be "harmonized" with the ICCTA because this land use regulation of crucial rail work would directly interfere with and even defeat rail operations, thereby causing an irreconcilable conflict between these two (2) statutes.

On October 5, 2020, the Commission and Del Mar filed replies in opposition to the Petition. Both parties argued that the Board should reject NCTD's request for a declaratory order with respect to these preemption issues.

On October 26, 2020, NCTD moved the Board for leave to file a rebuttal and simultaneously filed the rebuttal. On October 29, 2020, the Commission objected to NCTD's filing of a rebuttal. On November 5, 2020, Del Mar also objected.

During the past week, NCTD has had constructive discussions with the Commission and Del Mar about the matters at issue in this proceeding. These three parties have agreed that the parties should engage in further talks to attempt to resolve these important issues.

Consequently, NCTD, with the concurrence of the Commission, respectfully moves the STB to hold the above-captioned proceeding in abeyance for 120 days while these settlement discussions take place. NCTD expects Del Mar also will concur in this Motion but has not confirmed this agreement to date.

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November 6, 2020

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on November 6, 2020, I served a copy of this Motion to Hold Proceeding in Abeyance on counsel known to represent the parties of record by the most expedient method as follows:

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