

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

301213

ENTERED
Office of Proceedings
October 26, 2020
Part of
Public Record

Finance Docket No. 36433

NORTH COUNTY TRANSIT DISTRICT
PETITION FOR DECLARATORY ORDER

MOTION FOR LEAVE TO FILE A REBUTTAL

North County Transit District ("NCTD") respectfully moves the Surface Transportation Board ("STB" or "Board") for leave to file a rebuttal in the above-captioned proceeding. 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 these 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, five parties filed replies in opposition to the Petition, including the Commission and Del Mar. One of the overriding arguments in opposition by these parties was the Petition did not set forth a present controversy or was not ripe. They also claimed that NCTD did not provide sufficient facts regarding the rail right-of-way projects to properly determine whether local, state, and federal coastal management regulation of these activities were preempted under the ICCTA.

While NCTD believes it did provide sufficient information regarding a safety fencing project and a bluffs maintenance project for the Board to determine whether preemption applies and whether there is a present controversy here, it is now providing supplemental information in its Rebuttal to describe in more detail these two upcoming rail projects. While NCTD understands that a reply to a reply is not permitted under 49 C.F.R. § 1104.13(c), it believes this filing will only be helpful to the Board and will not prejudice the other parties, some of whom, like the Commission, are already familiar with these two projects. Therefore, NCTD asks the STB to accept this Rebuttal being filed simultaneously herewith into the record.

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October 26, 2020

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on October 26, 2020, I served a copy of this Motion for Leave to File a Rebuttal on counsel known to represent the parties of record by the most expedient method as follows:

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