

February 2019 Monthly Washington, D.C. Report



To: Alix A. Bockelman, Deputy Executive Director, Policy

From: Tom Bulger, President GRI

Date: February 25, 2019

RE: Monthly Report for February 2019

- MTC Washington, D.C. Trip
- Government Shutdown Averted
- House Transportation & Infrastructure Committee Holds Infrastructure Hearing
- Green New Deal Resolution
- Federal Railroad Administration Attempts to Derail California High Speed Rail
- Coming and Going

MTC Washington, D.C. Trip

Currently, we are wrapping up meeting schedules for the Commission's March 2019 trip to Washington, DC. The annual Congressional Reception is all set for March 12th in the Gold Room in the Rayburn House Office Building. Our special guest at the reception will be Congressman Peter DeFazio (D-Ore.) who is the new Chairman of the House Transportation & Infrastructure Committee.

Reception invitations have been sent to hundreds of invited guests. Meeting schedules are being developed and should be finalized next week.

Government Shutdown Averted

The President signed the "Consolidated Appropriations Act, 2019 on February 15th, which provides Fiscal Year 2019 funding for many federal departments including the Department of Transportation through September 30, 2019.

The legislation provides \$13.4 billion for public transit, \$2.6 billion for intercity passenger rail grants, and is \$1.2 billion more than the Fixing America's Surface Transportation Act authorization levels.

The Capital Investment Grant program is funded at \$2.6 billion and requires the Federal Transit Administration to obligate 85% of these funds by December 31, 2020.

Funding highlights include:

- \$900 million for Better Utilizing Investments to Leverage Development transportation grants; no more than half can of the funds can go toward rural or urban projects;
- \$255 million for Consolidated Rail Infrastructure & Safety Improvements grant program. These funds are to be prioritized to those railroads that are at risk of missing the Positive Train Control deadline of December 31, 2020; and
- \$1.94 billion for AMTRAK.

House Transportation & Infrastructure Committee Holds Infrastructure Hearing

On February 7, 2019, I attended the House Transportation and Infrastructure Committee seven hour hearing titled "The Cost of Doing Nothing: Why Investing in Our Nation's Infrastructure Cannot Wait." Chairman DeFazio (D-Ore.) set the stage by asserting that the country now has an investment gap over the next 10 years of \$2 trillion.

The most pressing account was to establish a reliable funding source for the Highway Trust Fund before the 2020 reauthorization.

Green New Deal Resolution

On February 7, 2019, progressive Members of Congress introduced a non-binding resolution calling on Congress to adopt a Green New Deal.

The House Resolution was introduced as H.Res. 109 by Rep. Alexandria Ocasio-Cortez (D-N.Y.) with 67 sponsors and in the Senate as S.Res.59 by Senator Ed Markey (D-Mass.) with 11 sponsors.

The Resolutions include aspirational goals such as investment in infrastructure, eliminating pollution and greenhouse gas emissions, access to clean water, reduce the risks posed by climate impacts and that any infrastructure bill address climate change.

The Green New Deal proposals are not expected to become law this year, but is a great platform for sponsors who are seeking the Democratic nomination for President in 2020.

Federal Railroad Administration Attempts to Derail California High Speed Rail

On February 19, 2019, the Administrator of the Federal Railroad Administration sent a letter to the California High-Speed Rail Authority (CHSRA) stating they intend to de-obligate the full \$929 million obligated under the Agreement on the grounds that CHSRA failed to comply with the terms of the agreement. The letter is attached for reference.

Coming and Going

- Nicole Nason to be Federal Highway Administration Administrator if approved by the Senate Environment and Public Works Committee.
- Jeffrey Rosen is expected to be nominated for Deputy Attorney General. He is currently the Department of Transportation's Chief Operating Officer.

Attachment:

- Attachment A: Federal Railroad Administration Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01



U.S. Department
of Transportation

**Federal Railroad
Administration**

**Attachment A
Agenda Item 7b**

1200 New Jersey Avenue, SE
Washington, DC 20590

February 19, 2019

Mr. Brian Kelly (via electronic mail to brian.kelly@hsr.ca.gov)
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, California 95814

Subject: Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01

Dear Mr. Kelly,

This letter provides notice to the California High-Speed Rail Authority (CHSRA) that the Federal Railroad Administration (FRA) intends to terminate Cooperative Agreement No. FR-HSR-0118-12-01-01 (Agreement) effective March 5, 2019. Following termination, FRA also intends to promptly de-obligate the full \$928,620,000 obligated under the Agreement.

FRA has determined that CHSRA has materially failed to comply with the terms of the Agreement and has failed to make reasonable progress on the Project (as defined in the Agreement), significantly endangering substantial performance. Considering this determination, FRA intends to exercise its right to terminate the Agreement, consistent with Section 23 of the Agreement.¹ FRA's determination is based on many factors, including:

- CHSRA's failures relating to required State expenditures necessary to advance the Project according to the Project's schedule.
 - CHSRA has failed to achieve the State contribution rates described in its quarterly Funding Contribution Plan (FCP). For example, CHSRA committed to a \$141.8 million State contribution to advance final design and construction activities in December 2018, but reported only \$47.9 million of actual expenditures in that month. This almost \$100 million difference shows not only CHSRA's inability to deliver State contributions as outlined in the FCP, it is also an example of CHSRA's failure to advance construction work and expend funds at a pace necessary to complete the Project according to its schedule. Other months show the same shortfall of expenditures as compared to the State contribution commitment.

¹ Section 22902(a) of Title 49 (Previously codified at 24402(a) of Title 49) authorizes the Secretary of Transportation to require terms, conditions, and other requirements that the Secretary deems necessary or appropriate on grants awarded under Section 301 of the Passenger Rail Investment and Improvement Act of 2008, which is one of the authorized programs included in the High-Speed Intercity Passenger Rail grant program. Additionally, 49 CFR § 18.43(a), provides the general authority for Federal awarding agencies to terminate awards if the grantee "materially fails to comply with any term of [the] award, whether stated in a Federal statute or regulations, an assurance, a notice of award, or anywhere else."

- Based on CHSRA Board of Directors reports, FRA has determined that CHSRA will not complete the Project by 2022, the end of the Agreement's period of performance.
 - FRA's evaluation of the various documents submitted to FRA, or publicly available (e.g., CHSRA's 4th Quarter 2018 Summary Schedule and CHSRA's February 2019 Finance and Audit Committee reports) shows CHSRA cannot complete the Project by 2022.
 - When compared against the amount of funds expended, the pending contractual completion dates show CHSRA is failing to make the type of sustained progress necessary to meet the 2022 deadline. For example, according to CHSRA's February 2019 Finance and Audit Committee report on Construction Package (CP) 4, the contractor has expended 25.1% of the contract price but approximately 86.5% of contract's period of performance has elapsed, demonstrating that CHSRA is not advancing construction work at the pace necessary to maintain the Project's schedule. Numerous prior quarterly reports reflect the same failure to expend contract dollars consistent with the contract period of performance.
- CHSRA's failure to submit required critical grant deliverables adequate to demonstrate CHSRA is effectively managing delivery of the Project. Such deliverables include Funding Contribution Plans.
 - CHSRA has failed to provide FRA with timely and satisfactory financial reports and other related deliverables. Without these deliverables, CHSRA has not demonstrated that it is making reasonable progress or effectively managing the Project. For example, since 2016, FRA has found over 40 reports and deliverables are delinquent or do not contain the type of information or level of detail necessary to allow FRA to oversee CHSRA's performance of the Project; this represents a very large portion of the reports and deliverables due over that timeframe. A portion of these delinquent or unsatisfactory deliverables are also required by Cooperative Agreement No. FR-HSR-0009-10-01-06; however, they generally show CHSRA's repeated failure to meet its obligations to FRA.
- Based on findings from FRA's oversight and monitoring, CHSRA has failed to take the appropriate corrective actions to ensure delivery of the Project.
 - FRA has regularly communicated its concerns on the above issues to CHSRA through: routine monitoring with CHSRA staff; individual meetings with CHSRA leadership; Quarterly Executive Meetings; and feedback on the Authority's reports and deliverables as part of FRA's routine business practice. CHSRA has consistently failed to take the appropriate corrective actions.

- FRA identified areas of interest in the 2017 annual monitoring (e.g., failure to develop and submit to FRA realistic Project schedules and budgets based on past performance and trends). During its most recent November 2018 monitoring, FRA found that CHSRA failed to satisfactorily address those areas of interest.

Reinforcing FRA's concerns about CHSRA's past performance, and the likelihood CHSRA will deliver on its obligations, is the significant change in the State of California's plans for its high-speed rail system. As described in the Agreement and in the various CHSRA applications for Federal financial assistance, the Project is a component part of the larger high-speed rail system that would, ultimately, connect San Francisco in the north and Los Angeles and Anaheim in the south. During his recent State-of-the-State address, Governor Newsom presented a new proposal that represents a significant retreat from the State's initial vision and commitment and frustrates the purpose for which Federal funding was awarded (i.e., an initial investment in the larger high-speed rail system).

If you believe there is information showing that: (1) CHSRA has satisfied its commitments and obligations under the Agreement; (2) is making reasonable progress to deliver the Project; and (3) that the Governor's announcement does not constitute a fundamental change in the purpose of the overall project for which Federal funding was awarded, FRA will take that information into consideration prior to taking any final action regarding termination of the Agreement. You may submit any such information before March 5, 2019, to Ms. Jamie Rennert, FRA's Director of Program Delivery at jamie.rennert@dot.gov.

FRA reserves its rights under all other grant or cooperative agreements with CHSRA and is exploring all available legal options, including termination of Cooperative Agreement No. FR-HSR-0009-10-01-06 and the recovery of the Federal funds expended under that Cooperative Agreement.

Sincerely,



Ronald L. Batory
Administrator

By e-mail to: brian.kelly@hsr.ca.gov

cc: The Honorable Gavin Newsom
Governor
State of California

The Honorable Brian C. Annis
Secretary
California State Transportation Agency