

Decision 03-12-046 December 18, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the State of California, Department of Transportation, for an order authorizing the Department to construct a new freeway under the existing Muscoy Underpass, U.S. D.O.T. No 747224N (No C.P.U.C. Number has been assigned) at Milepost 487.10 on the "BB" line of the Union Pacific Railroad Company in the County of San Bernardino.

Application 03-07-012  
(Filed July 11, 2003)

**OPINION**

**Summary**

State of California, Department of Transportation (Caltrans), in cooperation with San Bernardino Associated Governments (SANBAG), requests authority to construct a new freeway under the existing Muscoy Underpass on State Route (SR) 210, which will cross under the Union Pacific Railroad Company's (UPRR) "BB" line tracks in San Bernardino County.

**Discussion**

Caltrans proposes to construct a new freeway under the existing Muscoy Underpass on SR-210 in San Bernardino County. The CPUC Crossing Number has not yet been assigned to the underpass. The underpass is at milepost 487.10 on the BB line of the UPRR. The United States Department of Transportation number is 747224N. The Muscoy Underpass was originally constructed with state funds in 1967 for the purpose of accommodating the eventual construction of this freeway. Caltrans also plans seismically retrofit of the underpass to meet

current requirements. The purpose of the project is to increase capacity and to improve traffic flow in the region. It is part of the overall project to extend SR-210 from Los Angeles County to a connection with Interstate (I) 215 in San Bernardino County. As this is an existing underpass structure, there are no railroad horizontal and vertical clearance issues.

Caltrans, acting by and through the California Transportation Commission, and in cooperation with the United States Department of Transportation – Federal Highway Administration (FHWA), is the lead agency for this project under California Environmental Quality Act of 1970 (CEQA), as amended in 1982 and as stated in Public Resources (PR) Code Section 21000 et seq. Caltrans and FHWA developed the project so as to give detailed consideration to the potential impact upon the quality of the environment. On September 20, 1996, the FHWA Deputy Regional Administrator signed a Record of Decision, attached to Exhibit C of the Application. FHWA's Record of Decision concluded:

Based upon consideration of all the social, economic, and environmental evaluations contained in the final environmental impact statement (final EIS), the input received from other agencies, organizations, and the public; and the factors and project commitments outlined above (in the Record of Decision), it is the decision of the Federal Highway Administration to select the Freeway Alternative for the SR 30 Improvement Project in Los Angeles and San Bernardino Counties, California as described in the final EIS approved on July 1, 1996. This alternative is the environmentally preferable alternative that will meet the needs of the project. This Record of Decision also anticipates and specifically encompasses, the construction of the LDV (Local Design Variation), i.e. the below grade construction of the freeway section in Fontana and Rialto, in the event that sufficient local funding for additional required drainage improvement becomes available in time for that

work to be completed prior to, or simultaneously with, freeway construction.

The California Public Utilities Commission (Commission) is a responsible agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project (CEQA Guideline Section 15050(b)). The specific activities that a responsible agency must conduct are contained in CEQA Guideline Section 15096.

The Commission has reviewed FHWA's Record of Decision and finds the environmental document adequate for our decision-making purposes. In considering this document, we note that the Record of Decision developed and evaluated a range of alternatives as well as a No Build Alternative. The Record of Decision included adverse environmental impacts associated with the proposed project and mitigation measures for the following impacts: hydrology, floodplains, and water quality; biological resources; cultural resources; air quality; noise; hazardous materials and waste; relocation and displacement; parks and recreation; and construction (short-term construction impacts, such as noise, dust, and local traffic congestion). Safety, transportation, and noise are within the scope of the Commission's permitting process.

The Record of Decision identified environmental impacts related to safety in the area of hazardous materials and waste. The Record of Decision stated that the San Bernardino County Department of Environmental Health Services (Health Services), the lead regulatory agency, identified nine sites as potential locations for underground storage tanks and soil contamination. Health Services

investigated all sites and, with the exception of one site, Health Services could not warrant further investigation. However, due to detected total recoverable petroleum hydrocarbons at one location, additional investigation and remedial action may be necessary if excavation is necessary in the vicinity of the site.

The Record of Decision identified potential environmental impacts related to noise. Based on studies completed through September 20, 1996, Caltrans, in cooperation with FHWA, recommended noise abatement measures. Caltrans has proposed sound wall locations and heights based on conceptual design information. During final design, as Caltrans and FHWA finalize details, additional noise studies may result in changes to the proposed sound wall heights and locations. During the period of construction, short-term construction impacts from noise will occur. Construction contractors will comply with all Caltrans and local noise control ordinances that apply to construction activities. Caltrans will construct temporary or permanent sound walls, where applicable, as quickly as possible in the first phases of construction to minimize noise impacts.

The Record of Decision also identified potential environmental impacts to transportation due to increase in localized traffic congestion. Since many highway construction projects often occur on roadways with existing traffic, such projects typically must occur during nighttime hours to avoid or minimize the impact of construction activities on such traffic, most of which occurs during daylight hours. However, since Caltrans will construct the proposed project within a mostly undeveloped right-of-way, little or no need exists to conduct construction activities at night to avoid disrupting traffic. Therefore, Caltrans and FHWA anticipate that the SR-30 Improvements Project will occur almost entirely during daylight hours.

Caltrans considered a full range of alternatives during the course of selecting a proposed project. The proposed No Build Alternative would retain the existing SR-30 in its current configuration as a combination of Baseline Road, 19<sup>th</sup> Street, and Highland Avenue with short freeway segments at both the east and west ends of SR-30. The existing SR-30 consists of undivided two-lane to four-lane arterials. The existing SR-30 experiences a capacity deficiency and accident rates ranging from 0.65 to 6.48 accidents per million vehicle miles traveled. Actual accident rates exceed expected accident rates at nine locations along the existing SR-30. In addition, operational and geometric deficiencies, such as changes in road alignment and stop-and-go traffic, exist at most SR-30 intersections with other roadways in the proposed project corridor. Caltrans anticipates substantial growth in the corridor and estimates that by the year 2010, traffic demand will far exceed capacity. For the above reasons, the No Build Alternative does not solve the safety and projected traffic needs of the project area and was rejected.

Caltrans also considered and later rejected some additional alternatives. These included Freeway/Expressway, Full Expressway, Expressway/Arterial, Arterial Highway, Parkway, Transportation System Management, Light Rail Transit in SR-30 Corridor, Low Energy and Non-Motorized Alternative, I-10 Improvements, and the Foothill Alternative.

Caltrans selected the Freeway Alternative, because this alternative best meets the projected future traffic demands, and will facilitate movement of people and goods, improve traffic safety, alleviate congestion on east-west arterial streets and I-10, and complete a link in the regional freeway system. The Record of Decision also stated that the Freeway Alternative would also complete the planned integrated regional freeway system. The Record of Decision further

stated that the Freeway Alternative would complete the planned integrated regional transportation network between San Bernardino and eastern Los Angeles Counties. Also, the proposed project conforms to State, regional, and local plans and policies.

Caltrans prepared a Mitigation Monitoring Plan (Plan) for this project. This Plan calls out each mitigation measure, the timing for implementing each measure, a performance objective or objectives for each measure, and a “sign off” that indicates the completion of each measure. Current Caltrans and FHWA policies and procedures are adequate to ensure the carrying out of all mitigation measures.

In reviewing the Record of Decision, we find that with respect to issues within the scope of our permitting process, FHWA reasonably concluded that the Freeway Alternative for the SR-30 Improvement Project in Los Angeles and San Bernardino Counties is the environmentally preferable alternative that will meet the needs of the proposed project. We will adopt FHWA’s findings and mitigation measures for purposes of our approval.

The Commission’s Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) has inspected the site of the proposed construction of a new freeway under Muscoy Underpass in San Bernardino County.

The Application is in compliance with the Commission’s filing requirements, including Rule 38 of Rules of Practice and Procedure, which relates to the construction of a public road, highway or street across a railroad. A site map and detailed drawings of the existing Muscoy Underpass with seismic retrofitting are shown in Appendix A attached to the order.

In Resolution ALJ 176-3117, dated August 21, 2003, and published in the Commission Daily Calendar on August 22, 2003, the Commission preliminarily categorized Application (A.) 03-07-012 as ratesetting, and preliminarily determined that hearings were not necessary. Since no protests were filed, this preliminary determination remains accurate. The Commission's Consumer Protection and Safety Division recommends that the Commission grant this Application. Given these developments, it is not necessary to revise the preliminary determinations made in Resolution ALJ 176-3117.

This Application is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), we waive the otherwise applicable 30-day period for public review and comment.

#### **Assignment of Proceeding**

Richard Clark is the assigned Examiner in this proceeding.

#### **Findings of Fact**

1. The Commission published Notice of A.03-07-012 in the Commission Daily Calendar on July 15, 2003. There are no unresolved matters or protests; a public hearing is not necessary.
2. Caltrans requests authority, under Public Utilities Code Sections 1201-1205, to construct a new freeway under the existing Muscoy Underpass, which crosses under the tracks of the UPRR, on State Route 210 in San Bernardino County.
3. Public convenience, necessity, and safety require the construction of a new freeway under the existing Muscoy Underpass.
4. Caltrans, in cooperation with FHWA, is the lead agency for this project under CEQA, as amended.

5. In approving the project on September 20, 1996, the FHWA, in its Record of Decision, concluded that the Freeway Alternative for the SR-30 Improvement Project in Los Angeles and San Bernardino Counties is the environmentally preferable alternative that will meet the needs of the project. Mitigation measures were made a condition of the approval of the project.

6. The Commission finds that the FHWA Record of Decision for the project is adequate for our decision-making purposes.

7. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's Record of Decision.

8. Safety, transportation and noise are within the scope of the Commission's permitting process.

9. For the approved project, the lead agency identified environmental impacts related to safety, transportation, and noise.

### **Conclusions of Law**

1. With respect to significant environmental impacts from safety, transportation, and noise, we conclude that the lead agency adopted feasible mitigation measures to eliminate or substantially lessen the impacts to a less-than-significant level. We adopt the findings and mitigation measures in the FHWA's Record of Decision for purpose of our approval.

2. The Application should be granted as set forth in the following order.

### **O R D E R**

**IT IS ORDERED** that:

1. State of California, Department of Transportation (Caltrans), in cooperation with San Bernardino Associated Governments (SANBAG), is authorized to construct a new freeway under the existing Muscoy Underpass, a

grade-separated highway-rail crossing, on State Route 210 under Union Pacific Railroad Company's (UPRR) main line tracks in San Bernardino County, at the location and substantially as described and shown by plans attached to the Application and Appendix A attached to this order, identified as CPUC Crossing No. BB-487.10-B.

2. Clearances shall conform to Commission General Order (GO) 26-D.

3. Walkways shall conform to GO 118. Caltrans, in cooperation with SANBAG and UPRR, shall maintain walkways adjacent to any trackage subject to rail operations free of obstructions and shall promptly restore walkways to their original condition in the event of damage during construction.

4. Caltrans, in cooperation with SANBAG and UPRR (parties), shall bear construction and maintenance costs in accordance with an agreement into which the parties have entered. Caltrans shall file a copy of the agreement with the Rail Crossings Engineering Section (RCES) prior to construction. Should the parties fail to agree, the Commission shall apportion the costs of construction and maintenance by further order.

5. UPRR shall provide flagging upon 30 days' written request by Caltrans. Caltrans shall reimburse UPRR for all flagging costs.

6. Within 30 days after completion of the work under this order, UPRR shall notify RCES in writing, by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), of the completion of the authorized work.

7. This authorization shall expire if not exercised within three years unless the Commission extends the time or if the parties do not comply with the above conditions. The Commission may revoke or modify authorization if public convenience, necessity or safety so require.

8. The Commission grants the Application as set forth above.

9. Application 03-07-012 is closed.

This order becomes effective 30 days from today.

Dated December 18, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners.



