

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the California High-Speed Rail Authority to Construct Four Proposed High-Speed Rail Tracks and Rail-Rail Grade Separation at CHSRA’s MP 223.56 crossing over UPRR/SJVRR’s existing Mainline Track at MP 249.46, part of the Proposed Hanford Viaduct Structure, located in the County of Kings, State of California.

Application 23-05-014

DECISION GRANTING AUTHORITY FOR THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY TO CONSTRUCT A RAIL-RAIL VIADUCT GRADE SEPARATION OVER THE UNION PACIFIC RAILROAD/SAN JOAQUIN VALLEY RAILROAD EXISTING MAINLINE TRACK IN KINGS COUNTY

Summary

Pursuant to Public Utilities (Pub. Util.) Code Sections 1201 through 1205, this decision authorizes the California High-Speed Rail Authority (CHSRA) to construct a rail-rail viaduct grade separation including four tracks at the CHSRA’s Milepost (MP) 223.56 over Union Pacific/San Joaquin Valley Railroad’s (UPRR/SJVRR) existing mainline track at their MP 249.46 in Kings County. This grade separation is part of the larger proposed Hanford Viaduct structure.

The Application is approved.

This proceeding is closed.

1. Background

1.1. Factual Background

The CHSRA is an agency of the State of California formed pursuant to the California High-Speed Rail Act (Pub. Util. Code Sections 185000 *et. seq.*). The CHSRA offices are located at 770 L Street, Suite 620, Sacramento, CA 95814.

The CHSRA requests authorization to construct a rail over rail grade separation including four tracks at the CHSRA Milepost (MP) 223.56 over the UPRR/SJVRR existing mainline track at their MP 249.46 in Kings County. This grade separation is part of the larger proposed Hanford Viaduct structure (Proposed Crossing), which in turn is part of the CHSRA's Construction Package (CP) 2-3.¹ Construction within the UPRR/SJVRR right of way will begin after the CHSRA and UPRR/SJVRR have executed a construction and maintenance agreement.

The Proposed Crossing is one of the approximately 36 grade-separated crossings anticipated as part of the CHSRA's CP 2-3 which spans 65.5 miles from East American Avenue in Fresno County to one mile north of the Tulare-Kern County line as part of the Fresno to Bakersfield section of the California High-Speed Train System (CHSTS) Project (Fresno-Bakersfield CHSTS Project). The Fresno-Bakersfield CHSTS Project is a part of the broader CHSTS Project, which upon completion will connect Sacramento to San Diego via San Francisco, Fresno, and Los Angeles. The CHSTS Project, including the Proposed Crossing, will be constructed in a closed corridor with a continuous eight-foot welded wire Access Restricted (AR) fence or barrier to prevent unauthorized access to the

¹ The CP 2-3 Project generally consists of two CHSTS mainline tracks, aligned in a general north-south direction, however at this location there are four mainline tracks.

CHSRA's right-of-way. In addition to the AR fence or barrier walls, intrusion monitoring and detection is proposed.²

For the Proposed Crossing, the mileposts, and the proposed California Public Utilities Commission (CPUC or Commission) crossing numbers for both the CHSRA and the UPRR/SJVRR are in the table below. The United States Department of Transportation (DOT) does not assign crossing numbers to track over track crossings.

Crossing Name	Milepost	Proposed CPUC #	Proposed DOT #
CHSRA Rail-Rail (Track over Track)	CHSRA 223.56	135S-223.56-BT	N/A
UPRR/SJVRR Rail-Rail (Track over Track)	UPRR/SJVRR 249.46	103BD249.46-AT	N/A

1.2. Procedural Background

On May 12, 2023, the CHSRA filed Application (A.) 23-05-014. On June 6, 2023, the Commission's Rail Safety Division (RSD) filed a response to the Application. No party protested the Application. On July 14, 2023, a prehearing conference (PHC) was held to discuss the category, scope, and schedule for the proceeding.

On July 25, 2023, the Assigned Commissioner, Commissioner Shiroma, issued a Scoping Memorandum and Ruling (Scoping Memo) for the proceeding. The Scoping Memo determined that evidentiary hearings were not necessary and confirmed the initial categorization of this proceeding as ratesetting. Rule 7.1(e)(2) directs that when a proceeding does not clearly fit into any of the categories as defined in the Commission's Rules of Practice and Procedure

² Application at 3 of 10.

(Rules) 1.3 (a), (b), (f), and (g), the proceeding will be conducted under the rules applicable to the ratesetting category.

1.3. Submission Date

This matter was submitted on July 25, 2023, upon filing of the Scoping Memo.

2. Jurisdiction

The Commission has jurisdiction over railroad crossings pursuant to Pub. Util. Code Sections 1201 through 1205. Rule 3.10 governs applications to construct a railroad across another railroad. Commission General Order (GO) 26-D prescribes the minimum clearance requirements on railroads and structures adjacent to railroad tracks.

3. Issues Before the Commission

The Scoping Memo and Ruling identified the following issues to be within the scope of this proceeding:

1. Whether the Application complies with applicable law, rules, and Commission decisions including but not limited to Pub. Util. Code Sections 1201-1205 and Rule 3.10 – such that the Commission should grant the CHSRA’s Application to construct one grade-separated rail over rail crossing involving four high-speed tracks constructed over the at-grade UPRR/SJVRR mainline track.
2. Whether the CHSRA has complied with the California Environmental Quality Act (CEQA).
3. Whether the Commission should grant the CHSRA a period of 72 months from the Application approval date to complete the proposed crossing.
4. Whether the Application aligns with or impacts the achievements of any of the goals of the Commission’s Environmental and Social Justice (ESJ) Action Plan.

4. Discussion and Analysis

4.1. Response of the Rail Safety Division

RSD states that it conducted a site visit of the Proposed Crossing location on May 14, 2020. RSD has been in frequent communication with the CHSRA regarding the CHSTS project and has not been informed – and is not aware of any – changed circumstances or conditions at the project site that would change RSD’s safety analysis since the site visit. Upon review of A.23-05-014, RSD concludes that the Application complies with the Commission’s applicable Rules and GO 26-D. RSD has no objections to the Application as proposed.

After review of the Application and RSD’s response, the Commission finds that the Application complies with Rule 3.10 and GO 26-D, for the Proposed Crossing as detailed in Exhibits A through D of the Application. RSD also recommends language for the Commission’s Ordering Paragraphs of this decision, which we find reasonable.³

4.2. Timeframe to Construct

CHSRA requests authority to complete its construction of the Proposed Crossing within 36 months, or 3 years.⁴ RSD in its response recommends that CHSRA be given an authorized time period of 72 months, or 6 years, from the date of the Commission Order within which to complete construction of the crossing. This is longer than the typical time period recommended by RSD for the construction of grade-separated crossings. However, RSD states that because the CHSTS project is complex, it could take longer than the typical 3-year cycle to

³ RSD Response at 3-4.

⁴ Application at 7 of 10.

complete. Moreover, RSD does not believe that the 72-month authorized time period for construction will present any safety issues.⁵

The Commission finds RSD's recommendation reasonable. Accordingly, the Commission approves RSD's recommendation to construct the Proposed Crossing within 72 months of the date of issuance of a Decision in this proceeding. This authorization will expire if it is not exercised within 72 months of the issuance of this decision unless time is extended.

4.3. Compliance with CEQA

Here, both CEQA and the National Environmental Policy Act (NEPA) apply. CEQA and NEPA apply to the discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA and NEPA is to inform decision makers and the public about potential significant environmental effects of a project.

For purposes of CEQA and NEPA, the Fresno-Bakersfield CHSTS Project constitutes a project. As such, the Proposed Crossing and associated environmental impacts, if any, were examined as part of the Fresno-Bakersfield CHSTS Project. The environmental impacts and mitigation plans associated with the Proposed Crossing are addressed in the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Fresno-Bakersfield CHSTS Project.^{6 7}

⁵ RSD Response at 2.

⁶ Application at 5 of 10. CHSRA included a summary of the Final EIR/EIS.

⁷ Application at Exhibit G. CHSRA included a copy of the Notice of Availability of the Final EIR/EIS for the Fresno-Bakersfield section. The Final EIR/EIS is available at the following URL: <https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/fresno-to-bakersfield-final-environmental-impact-report-environmental-impact-statement-eir-eis/>

Under CEQA, the lead agency is either the public agency that carries out the project or has the greatest responsibility for supervising or approving the project.⁸ CHSRA is the lead agency under CEQA, and the Federal Railroad Administration (FRA) is the lead agency under NEPA. The CHSRA, in conjunction with the FRA, prepared a Draft EIR/EIS in 2011 and a revised draft in 2012. After public review and comment, the CHSRA and the FRA jointly prepared the Final EIR/EIS in April of 2014. The CHSRA's Board of Directors certified the Final EIR/EIS and filed a Notice of Determination on May 7, 2014 (State Clearinghouse No. 2009091126). FRA reviewed the Final EIR/EIS under NEPA and issued a Record of Decision on June 27, 2014.

A responsible agency under CEQA "includes all public agencies other than the lead agency which have discretionary approval power over the project."⁹ For the Fresno-Bakersfield CHSTS Project, the Commission is a responsible agency under CEQA. As such, the Commission must consider the environmental impacts identified in the Final EIR/EIS as they relate to the Proposed Crossing, which is a portion of the Fresno-Bakersfield CHSTS Project, before acting on, approving, or issuing a discretionary decision allowing the project to proceed.¹⁰

The Commission has the authority to mitigate or avoid only the direct and indirect significant environmental effects of the Proposed Crossing and must approve any mitigation measures within the Commission's jurisdiction that avoid or mitigate the significant environmental impacts associated with the Proposed Crossing, unless the changes or alterations are infeasible for specific

⁸ CEQA Guidelines (Title 14 of the California Code of Regulations (14 Cal. Code Regs.), Sections 15050 and 15051.

⁹ 14 Cal. Code Regs. Section 15381.

¹⁰ 14 Cal. Code Regs. Sections 15091, 15092, and 15093.

economic, legal, social, technical, and other considerations.¹¹ The Commission must balance any unavoidable significant impacts of its decision against specific economic, legal, social, technical, or other benefits. Finally, the Commission must file a Notice of Determination with the State Clearinghouse certifying that the Commission has considered the environmental document.¹²

Here, the Final EIR/EIS for the Fresno-Bakersfield CHSTS Project considered potential environmental impacts in the categories of transportation; air quality; noise and vibration; biology; hydrology; geology; hazardous materials; agricultural lands; aesthetics and visual resources; cultural resources; electromagnetic interference and electric and magnetic fields; safety and security; parks and recreation; public utilities and energy; and regional and cumulative impacts. The Final EIR/EIS found that many of the significant environmental impacts associated with the construction and operation of the Fresno-Bakersfield CHSTS Project could be mitigated and minimized to be considered less than significant under CEQA.¹³ Significant effects, as defined by CEQA, remain in the areas of noise and vibration; land use and development; agricultural lands; visual effects; and parks, recreation, and open space after the application of mitigation. The Proposed Crossing, which is only a portion of the Fresno-Bakersfield CHSTS Project, does not substantially contribute to any of the unavoidable significant impacts identified and described in the Final EIR/EIS.¹⁴

An extensive set of mitigation measures and a mitigation monitoring program were developed to lessen these impacts caused by the Fresno-

¹¹ 14 Cal. Code Regs. Sections 15091(a)(2) and 15096(g).

¹² 14 Cal. Code Regs. Sections 15096(h) and 15096(i).

¹³ Final EIR/EIS at 3.19-9.

¹⁴ Final EIR/EIS at 3.12-44-45.

Bakersfield CHSTS Project, including the Proposed Crossing, with the goal of keeping all impacts below the level of significance. When an impact was found to exceed the accepted level of significance, a mitigation measure was designed to reduce the impact below the level of insignificance. The Final EIR/EIS indicated that there were certain impacts that could not be kept below the level of insignificance even with implementation of mitigation measures and therefore were considered significant. Some of these impacts would only be temporary during the period of construction. Others would have long term consequences.

Upon implementation of the required mitigation measures, there remain certain unavoidable significant impacts, as defined by CEQA, on noise and vibration, land use and development, agricultural lands, visual effects; and parks, recreation and open space as a result of the Fresno-Bakersfield CHSTS Project. There will however be no significant impacts on transportation, under CEQA, but under NEPA, there will be significant impacts on transportation. Cultural impacts will be significant only in some locations.

None of these significant impacts were identified as specifically relating to the Proposed Crossing that is the subject of this Application. The Commission has reviewed and considered the Final EIR/EIS as it relates to the Proposed Crossing. Based on our independent judgement, we find that the Final EIR/EIS, along with the mitigation measures and monitoring program adopted for the Fresno-Bakersfield CHSTS Project, is adequate for our decision-making purposes.

Upon issuance of this decision, and in compliance with 14 Cal. Code Regs. Sections 15096(h) and 15096(i), the Commission's Energy Division will file a Notice of Determination under CEQA with the State Clearinghouse certifying

that the Commission considered the Final EIR/EIS for the Fresno-Bakersfield CHSTS Project, which included the review of the Proposed Crossing.

4.4. Alignment with the Commission's ESJ Action Plan

In February 2019, the Commission adopted its Environmental and Social Justice (ESJ) Action Plan as a comprehensive strategy and framework for addressing ESJ issues in each proceeding.¹⁵

The Final EIR/EIS identifies several impacts that were considered when choosing the route for the Fresno-Bakersfield CHSTS Project, especially in the rural areas that will be affected by the Proposed Crossing. CHSRA and FRA worked with local, state, and federal officials and stakeholders to identify a route intended to follow existing railway corridors, to minimize relocation impacts and better align with current and planned land uses along the project corridor.¹⁶ In the Final EIR/EIS, no project impacts were identified as having any disproportionate impact on ESJ communities relating to the Proposed Crossing.¹⁷

The route, including the Proposed Crossing in A.23-05-014, was also designed to ensure agricultural producers in the San Joaquin Valley still have access to railroad service necessary to efficiently move their goods to market.¹⁸

Here, CHSRA has coordinated with tribal communities and stakeholders in the regions impacted by the Fresno-Bakersfield CHSTS Project.¹⁹ In fact, the

¹⁵ The Environmental and Social Justice Action plan is available on the Commission's website at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/environmental-and-social-justice.pdf>.

¹⁶ Final EIR/EIS at 3.12-1, 3.12-14-16 (aka Section 3.12.5.1), 3.12-54-56, and Section 3.12.11.

¹⁷ Final EIR/EIS at 3.12-44.

¹⁸ Final EIR/EIS at 3.12-54-56, and Section 3.12.11.

¹⁹ Final EIR/EIS at 7-5.

access to a high-speed rail option through the San Joaquin Valley would not only provide cleaner transportation options to residents but could improve ambient air quality by reducing the number of personal vehicle trips through the region.

Upon review of the Application and the record of this proceeding, including the Final EIR/EIS, we find that the Proposed Crossing, as proposed in this Application, aligns with the Commission's ESJ Action Plan. CHSRA is encouraged to hire local contractors and conduct public outreach about temporary street closures in multiple languages when constructing the Proposed Crossing, authorized in this decision.

5. Conclusion

A.23-05-014 complies with the Pub. Util. Code Sections 1201-1205, Rule 3.10, and GO 26-D for seeking authority to construct the Proposed Crossing. In addition, the Application complies with the requirements and provisions of CEQA, and it aligns with the goals of the Commission's ESJ Action Plan. Finally, the Commission supports RSD's recommendation to allow 72 months, or 6 years, from the issuance of this Decision for CHSRA to complete the Proposed Crossing. Accordingly, we authorize the CHSRA to construct the Proposed Crossing, subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for review and comment is waived.

7. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and David R. Van Dyken is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On May 12, 2023, CHSRA filed A.23-05-014 seeking authorization to construct a rail over rail grade-separated crossing including four tracks at CHSRA MP 223.56 over the UPRR/SJVRR existing mainline tracks at their MP 249.46 as part of the proposed CHSTS grade-separated structure, the Hanford Viaduct, located in Kings County, California.
2. The Proposed Crossing is a portion of the Fresno-Bakersfield CHSTS Project, which in turn, is a part of the broader CHSTS Project, which upon completion will connect Sacramento to San Diego via San Francisco, Fresno, and Los Angeles.
3. The Commission's RSD conducted a site visit of the Proposed Crossing, reviewed the Application and supporting documents, and filed a response in this proceeding noting in its findings that the Application and the Proposed Crossing comply with the Commission's Rules and GO 26-D.
4. Though CHSRA's Application requested 36 months, or 3 years, to construct the Proposed Crossing, as is the typical time period recommended by RSD; in this case RSD recommended 72 months, or 6 years, due to the complexity of the CHSTS Project.
5. CHSRA and FRA prepared the Final EIR/EIS for the Fresno-Bakersfield CHSTS Project.
6. The environmental impacts associated with the Proposed Crossing were examined in the Final EIR/EIS for the Fresno-Bakersfield CHSTS Project.

7. The Final EIR/EIS for the Fresno-Bakersfield CHSTS Project found that many of the significant environmental impacts associated with the construction and operation of the Fresno-Bakersfield CHSTS Project could be mitigated and minimized to be considered less than significant under CEQA.

8. None of the significant impacts identified and described in the Final EIR/EIS specifically relate to the Proposed Crossing.

9. The Commission has reviewed and considered the Final EIR/EIS as it relates to the Proposed Crossing.

10. The Final EIR/EIS provides evidence that ESJ impacts were considered.

11. The Final EIR/EIS also affirmed that CHSRA and FRA endeavored to minimize adverse impacts on ESJ communities and provided an opportunity for public comment during development of the Fresno-Bakersfield CHSTS Project.

12. The CHSTS Project, including the Proposed Crossing, will be constructed in a closed corridor with a continuous eight-foot welded wire AR fence or barrier to prevent unauthorized access to the CHSRA's right-of-way. In addition to the AR fence or barrier walls, intrusion monitoring and detection is proposed.

Conclusions of Law

1. CHSRA should be authorized to construct the Proposed Crossing in Kings County, California.

2. The Proposed Crossing complies with Pub. Util. Code Sections 1201-1205, the requirements of Rule 3.10, and the requirements of GO 26-D.

3. The Final EIR/EIS, as it relates to the Proposed Crossing in A.23-05-014, is received into evidence and is adequate for Commission decision-making purposes.

4. The Proposed Crossing in A.23-05-014 is consistent with the Commission's ESJ Action Plan.

5. Upon issuance of this decision and in compliance with 14 Cal. Code Regs. §§ 15096(h) and 15096(i), the Commission's Energy Division should file a Notice of Determination under CEQA with the State Clearinghouse certifying that the Commission considered the environmental documents related to the Proposed Crossing.

6. RSD's recommendation that CHSRA be authorized to complete the Proposed Crossing within 72 months, or 6 years, is reasonable and should be granted.

7. The approval and construction authorization granted in this decision should expire if not exercised within 72 months, or 6 years, of the issuance of this Decision, unless CHSRA seeks an extension of time or if the conditions adopted in the Ordering Paragraphs are not satisfied.

8. Application 23-05-014 should be granted.

9. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The California High-Speed Rail Authority (CHSRA) is authorized to construct a rail over rail grade-separated crossing including four tracks at CHSRA Milepost (MP) 223.56 over the Union Pacific Railroad/San Joaquin Valley Railroad existing mainline track at their MP 249.46 as part of the proposed California High-Speed Rail grade-separated structure, the Hanford Viaduct, located in Kings County, California.

2. The rail over rail grade separated crossing for both the California High-Speed Rail tracks and the Union Pacific/San Joaquin Valley Railroad mainline track shall be assigned California Public Utilities Commission crossing numbers

as seen below. The United States Department of Transportation does not assign crossing numbers to track over track crossings.

Crossing Name	CPUC Crossing No.
California High-Speed Rail Track over Track	135S-223.56-BT
Union Pacific/San Joaquin Valley Railroad Track over Track	103B-249.46-AT

3. The grade-separated rail over rail crossing authorized by this Decision shall have the configuration specified in Application 23-05-014 and its attachments.

4. The California High-Speed Rail Authority shall comply with all applicable rules, including California Public Utilities Commission General Orders.

5. The California High-Speed Rail Authority shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days prior to the opening of the Proposed Crossing. Notification shall be made by e-mail to rceb@cpuc.ca.gov.

6. Within 30 days after completion of the work authorized in this Decision, the California High-Speed Rail Authority shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division that the authorized work is completed by submitting a California Public Utilities Commission Standard Form G, Report of Completed Changes at Rail Crossings via e-mail to rceb@cpuc.ca.gov. Form G requirements and forms can be obtained at <http://www.cpuc.ca.gov/Crossings>.

7. Within 30 days after completion of the work under this Decision, the California High-Speed Rail Authority (CHSRA) shall notify the Federal Railroad Administration (FRA) of the existence of the public, grade separation under four proposed high-speed rails tracks by submitting United States Department of

Transportation's Crossing Inventory Form, FRA F6180.71. Concurrently, the CHSRA shall provide a copy of the inventory form FRA F6180.71 to the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division electronically at rceb@cpuc.ca.gov.

8. This authorization shall expire if not exercised within 72 months of the issuance of this Decision, unless extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

9. A request for extension of the 72-month authorized time period shall be submitted to the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days before the expiration of that period.

10. Application 23-05-014 is closed.

This order is effective today.

Dated _____, at Lakeport, California.