



**BRIEFING: JULY 18, 2017 BOARD MEETING AGENDA ITEM #5**

**TO:** Chairman Richard and Board Members

**FROM:** Tom Fellenz, Interim Chief Executive Officer

**DATE:** July 18, 2017

**RE:** Update on the Request for Assignment of National Environmental Policy Act (NEPA) Responsibilities

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**Background**

On January 24, 2017 President Trump signed Executive Order 13766 “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects.” The Executive Order laid out a process for states, through their Governors, to submit projects for consideration as “High Priority Projects” and an evaluation process for the White House Council on Environmental Quality (CEQ). These projects could then develop “accelerated procedures” to move through the environmental approval process faster.

On February 24, Governor Brown sent a letter to President Trump and the Acting Chair of the CEQ, Ted Boling, requesting the White House designate ten projects in California as “High Priority Projects” pursuant to President Trump’s Executive Order. Governor Brown identified the California High-Speed Rail Program, and specifically the Valley to Valley section and improvements for commuters in the Burbank to Anaheim sections, as one of the ten projects and supported efforts to expedite the reviews necessary to advance the program. Following that request, Governor Brown sent another letter to President Trump on May 12, asking the President to assign NEPA responsibilities “so that California can expedite its High-Speed Rail project.”

Federal law provides for the delegation, or assignment, of federal NEPA responsibilities to States. Under assignment, the State assumes the responsibility for carrying out NEPA responsibilities and assumes the accountability and liability for NEPA actions. In the case of the High-Speed Rail Program, the Authority would take on most of the NEPA responsibilities that to date have been carried out by the Federal Railroad Administration (FRA). The specific terms of assignment are defined in a memorandum of understanding between the federal and state agencies. Assignment to a state agency does not in any change the statutory or regulatory protections provided by NEPA, and has no impact on state laws and processes, such as under the California Environmental Quality Act, CEQA.

The California Department of Transportation (Caltrans) was the first state agency to receive NEPA assignment, and has successfully delivered a significant number of environmental

documents and approvals with major reductions in time and cost. The attachment to Governor Brown's May 12 letter summarizes the benefits. The High-Speed Rail Program could expect to realize comparable efficiencies.

A subsequent Letter of Interest to pursue NEPA Assignment was sent by CalSTA Secretary Brian Kelly to US DOT Secretary Chao on June 16, 2017 formally starting the process for NEPA Assignment.

### **Discussion**

Consistent with the Executive Order, the California High-Speed Rail Authority (Authority) has suggested "accelerated procedures" that streamline and expedite the administration of the Surface Transportation Project Delivery Program (Program), allowing for near-term assignment NEPA to the Authority. NEPA Assignment for the Authority would enable expedited review and approval of the environmental documents required for the project, as further detailed in Governor Brown's letter (attached). To the extent possible, the Authority's proposals have remained in line with the Caltrans approach.

Chairman Richard, Transportation Agency Secretary Kelly, and Interim CEO Tom Fellenz met with FRA leadership in June 2017 to discuss the NEPA assignment. In response to Secretary Kelly's June 16 letter, FRA had two days of initial meetings with CalSTA Deputy Secretary Brian Annis, Authority staff and external expert consultants to begin the process of NEPA assignment. Under the process, which is conducted pursuant to federal law and regulation, the Authority will submit a formal application to the FRA, and, would ultimately enter into a memorandum of understanding to execute assignment. There will be opportunities for public comment during the process.

Additional details about the process, schedule and progress will be presented at the Board meeting.

### **Recommendations**

This is an information item; there are no staff recommendations at this time.

### **Attachments**

- Letters from Governor Brown to the Trump Administration
- Letter from CalSTA Secretary Kelly to DOT Secretary Chao