M e m o r a n d u m

To: CHAIR AND COMMISSIONERS

CTC Meeting: March 5, 2013

Reference No.: 4.19b
Action

From: BIMLA G. RHINEHART
Executive Director

Subject: **TCIF Project 6 – Tehachapi Trade Corridor Rail Improvement Project Deprogramming**

ISSUE: Should the California Transportation Commission (Commission) deprogram Trade Corridor Improvement Fund (TCIF) Project 6, the Tehachapi Trade Corridor Rail Improvement?

RECOMMENDATION: Staff, along with the Northern California Trade Corridor Coalition (Coalition), recommends that the Commission deprogram the Tehachapi Trade Corridor Rail Improvement (Tehachapi) project today and program a Coalition chosen substitute project in Tehachapi's place at the Commission's May 2013 meeting.

BACKGROUND: Per the Commission's TCIF Program Guidelines, a project is eligible for inclusion in the TCIF Program if it "will begin construction by December 2013." The Tehachapi project, as currently scoped, was well on its way to comply with this TCIF Program Guideline until late last year when the US Department of the Interior submitted a letter commenting on the deficiencies of the project's Draft Environmental Impact Report as it relates to the Antiquities Act of 1906 and the Cesar Chavez National Monument and the Nuestra Senora Reina de la Paz National Historic Landmark District (letter attached). The Antiquities Act issues, most likely, will require a redraft and recirculation of the environmental document, but are not the only environmental stumbling blocks. The project has Endangered Species Act and Waters of the United States issues as well. The current best (optimistic) schedule pushes the project's environmental document approval to November/December 2013, a more pessimistic (realistic) schedule pushes approval well into mid 2014. The Commission, by law, is precluded from allocating construction funds to any project that has not completed its environmental phase. The Commission expects all TCIF projects to be allocated by the Commission's June 2013 meeting, so contracts can be advertised and awarded by the December 2013, construction deadline.

In addition, the Northern California Trade Corridor is currently over-programmed by about $25.5 million. With a $54 million TCIF Bond price tag, the Tehachapi project, as currently scoped, cannot receive a Commission allocation if it is delivered after the other last Northern California Trade Corridor TCIF projects are allocated in June 2013. The Commission, by law, is precluded from allocating funds to a project that is not fully funded. The Tehachapi project's sponsors could provide additional funds to fill in the $25 million funding gap, but so far have not signaled a willingness to commit to such a solution. The project could also be downscaled to fit the remaining TCIF funds, but that solution carries its own problems and risks.

YELLOW BOOK ITEM

A downscaled Tehachapi project would have to go through a benefit assessment to show that at least a commensurate benefit is derived from the downscaled project as was being derived from the original project for the public funds being used to improve privet infrastructure. The environmental process would still need to be completed for the downscaled project before the Commission could entertain an allocation request. Both railroads, the actual right-of-way owner and the project proponent, would need to agree to the downscaled project. And last, but not least the downscaled project would need to be under construction by December 2013, which would require under current Commission expectation a June 2013 allocation.

Staff believes the risks are great and project failure is unavoidable within the constraints of the TCIF Program Guidelines.

Attachment

YELLOW BOOK ITEM

United States Department of the Interior

NATIONAL PARK SERVICE
Pacific West Region
333 Bush Street, Suite 500
San Francisco, California 94104-2828

IN REPLY REFER TO:
H3417 (PWR CR)

October 11, 2012

Bryan Apper, Senior Environmental Planner
Environmental Division
California Department of Transportation
855 M Street, Suite 200
Fresno, CA 93721

RE: Draft Environmental Impact Report for the BNSF Railway/UPRR Mojave Subdivision, Tehachapi Rail Improvement Project, Kern County, California

Dear Mr. Apper:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the BNSF Railway/UPRR Mojave Subdivision, Tehachapi Rail Improvement Project (Tehachapi Rail Project). The project includes a proposal to double track five discontiguous segments of rail line between Bakersfield and Mojave, California. A portion of segment three, also referred to in the study as the Rowen to Woodford segment, runs along the border of the recently established César E. Chávez National Monument and Nuestra Señora Reina de la Paz National Historic Landmark District.

The National Park Service (NPS) is delegated monitoring and technical assistance responsibilities by Congress to ensure that National Historic Landmarks (NHL) retain the highest level of integrity. Our responsibilities include review and formal comment on actions that may impact National Historic Landmarks as well as the cumulative effect of changes through time on NHL properties. Prior to Caltrans's release of the Tehachapi Rail Project DEIR, Nuestra Señora Reina de la Paz (referred to in the study as the National Chavez Center) was listed on the National Register of Historic Places (NRHP) as a Historic District at the national level of significance and the National Historic Landmark (NHL) designation was pending. On October 8, 2012, President Obama, under the authority of the Antiquities Act of 1906, declared the property the César E. Chávez National Monument, a unit of the National Park System. The site has also now been designated a National Historic Landmark. NPS is providing comments on the DEIR in its capacity as the federal agency administering the National Monument and as part of the agency's NHL monitoring responsibilities. For convenience, this letter will generally refer to the site as the "National Chavez Center." In this letter, references to the National Chavez Center are also references to the National Monument, the National Historic Landmark, and the NRHP Historic District.

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Our review of the DEIR is limited to portions of the document that address potential impacts to the National Chavez Center. The NPS finds the DEIR impacts and benefits analysis for the National Chavez Center deficient. This finding is applicable for each and all levels of historical designation for the property. In other words, the DEIR is deficient in its analysis related to the National Chavez Center as a site listed on the National Register of Historic Places as a Historic District at the national level of significance, as a National Historic Landmark, and as a National Monument. NPS specific findings and questions follow, starting with the Cultural Resources analysis, a primary area of concern, followed by comments listed in the order addressed in the study.

Cultural Resources:

The analysis of impacts to the National Chavez Center is fundamentally flawed. The DEIR identifies the National Chavez Center as one of the cultural resources located in the affected environment of the project. The document accurately identifies Nuestra Señora Reina de la Paz as the National Register of Historic Places listing; however the DEIR fails to acknowledge that the National Register property is a district, nor does the analysis treat the property as such. Instead of analyzing impacts to the district, the analysis focuses on the list of contributors and non-contributors. The DEIR only discusses whether individual contributors are directly impacted and fails to assess the impacts to the district. Furthermore the APE for the project, as shown in Attachment B of the DEIR, appears to overlap and perhaps fall within the established boundary of the NRHP historic district, the NHL district, and the National Monument. The following excerpt from the DEIR illustrates the limited and inaccurate analysis of this cultural resource:

> . . . the properties closest to the area of direct impact are properties that are non-contributing resources (National Register of Historic Places Keeper Copy #184730 150035). For example, the non-contributing resources, such as the Memorial Garden, playground, visitor center, and swimming pool, are the buildings and structures closest to the project. As a result, none of the 24 contributing resources identified in the National Register of Historic Places registration form would be affected by the project (National Register of Historic Places Keeper Copy #184730 150035). Double-tracking the existing track segment would be an inconsequential change to the property and would not affect, alter, or change the character-defining features or setting of the historic property . . . (*BNSF/UPRR Mojave Subdivision Tehachapi Rail Improvement Project DEIR, p.67)*

The district consists of more than just a collection of buildings. The historic character of the place is defined by its location, setting, feeling, association, workmanship, design and materials. The analysis disregards the status of the property as a historic district and the aspects of its historic integrity.

The above excerpt also demonstrates that the exclusive focus on contributors and non-contributors leads to a conclusion in the DEIR that impacts to the Memorial Garden and the

Visitor Center do not need to be evaluated and are inconsequential. This conclusion is not accurate nor is it acceptable. The Memorial Garden is a contemplative space that contains the grave site of César E. Chávez, an indisputably recognized nationally-significant figure. The Visitor Center contains the office of César E. Chávez as well as the former legal aid offices of the United Farm Workers. Furthermore, under the Antiquities Act of 1906 the Presidential Proclamation that recently declared the property the César E. Chávez National Monument also identified the Memorial Garden and the Visitor Center as objects of historic interest. Ignoring the historic significance of the Memorial Garden and Visitor Center is not acceptable.

NPS requests Caltrans to provide full analysis of the impacts to the historic district as a whole as well as analysis of the impacts to the Memorial Garden and Visitor Center, especially regarding noise, vibration, and visual impacts. Please include in the analyses an assessment of impacts due to the increased frequency of trains passing along the boundary of the historic property.

Purpose and Need:

The DEIR does not substantiate the stated need for increased railroad capacity. Increases over the last decade do not necessarily translate into an equivalent future rate of increase. The study also states that the existing main track configuration through the Tehachapi Pass, could accommodate the predicted increase in rail traffic from an average of 35 trains per day to 50 trains a day. (*BNSF/UPRR Mojave Subdivision Tehachapi Rail Improvement Project, DEIR,* p.3*)*. Please substantiate the claim that greater capacity is needed and explain whether and why double tracking segment three is necessary to accomplish the stated purpose and need.

Alternatives:

The range of alternatives seems rather limited. The DEIR states that the locations for proposed double tracking were chosen to "minimize or avoid impacts to watercourses, bridges, culverts, tunnels, and historical fills." (*BNSF/UPRR Mojave Subdivision Tehachapi Rail Improvement Project, DEIR* ,p.9*)*. Minimizing or avoiding impacts to cultural resources also should have been one of the parameters guiding selection of segments for double tracking. Only five of the nine single-track segments through the Tehachapi Pass are proposed for double-tracking. One additional alternative is readily apparent -- no double tracking in segment 3 and double-tracking one of the other four single track segments. This seems to be a feasible alternative that merits consideration and analysis. NPS requests full consideration of this alternative.

Air Quality Analysis:

The air quality impact and benefit comparisons appear to be skewed in favor of rail in the following instances.

While future new technology aimed to reduce emission for trains is considered in the air

quality analysis, the California Air Resources Board On-Road Heavy Duty Diesel Vehicles (in-Use) Regulation, which will achieve reduced diesel truck emissions, does not appear to have been factored into the analysis.

The local air quality comparison at the National Chavez Center includes emissions from trains idling near the site in the Reduced Segment Alternative. If the track remained single in segment three, why would the trains need to idle right next to the National Chavez Center? The NPS requests that the DEIR address and analyze whether trains could idle further away. Additionally, please explain or analyze whether trains could power down rather than idle.

The DEIR does not demonstrate that increased railroad capacity will affect truck traffic on Route 58. It isn't enough to state that one train can carry the equivalent of 280 trucks. What evidence is there that shippers will choose to ship by rail rather than by truck? What evidence is there regarding the extent to which shippers might make this choice? The DEIR is deficient without evidence to substantiate the claims regarding effects on truck traffic.

Road maintenance reduction is identified as one of the air quality benefits of the proposed project. The claim for reduction in road maintenance is tied to the reduction in truck traffic that is presumed in the report. As stated above, the claims regarding reduction in truck traffic are not demonstrated in the DEIR. Furthermore, this benefit does not appear to consider that additional track will result in additional rail maintenance. The NPS requests that the analysis address the DEIR's claims regarding reduction in truck traffic and how additional rail maintenance offsets the claimed benefit.

Visual Aesthetics:

The study only identified two of the five segments as located within sensitive public views. Segment three was not included as one of the visually impacted segments; therefore no analysis of the visual impact to the National Chavez Center was included in the DEIR. The reason for omitting segment three is not stated and not readily apparent.

In the Visual Aesthetic analysis, the intensity and significance of visual impacts is addressed relative to three types of critical public views that include:

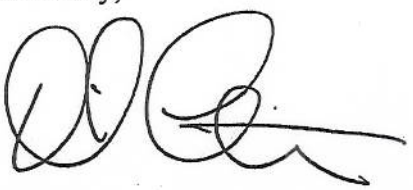
- Views that are readily available to the public.
- Views for which there are indications the public would be concerned if they were to be adversely affected.
- Views within which a proposed action would be substantially visible.

The National Chavez Center site meets all three criteria. We request that Segment three be fully considered in the Visual Aesthetics analysis.

This project has the potential to harm (adversely impact) a nationally significant historic property, now designated both as a NHL and a National Monument, and thus requires a greater level of care to ensure that all options to avoid those impacts have been taken. The National Park Service looks forward to Caltrans's response to these comments and to future

opportunities for consultation. If you have any questions, please do not hesitate to call or email Dr. Elaine Jackson-Retondo, National Historic Landmarks Program Manager, Pacific West Region, National Park Service at 415 623 2368 or elaine_jackson-retondo@nps.gov.

Sincerely,



David Louter, Ph. D.
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Pacific West Region

Cc Carol Roland-Nawi, CA SHPO (electronic copy)
Paul Park, General Counsel, Cesar Chavez Foundation (electronic copy)
Ruben Andrade, Acting Superintendent, César E. Chávez National Monument (electronic copy)

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