



BRIEFING: AUGUST 16, 2018 BOARD MEETING AGENDA ITEM #3

TO: Chairman Richard and Board Members

FROM: James Andrew, Assistant Chief Counsel

DATE: August 16, 2018

RE: Consider Revising the Delegation of Authority to the CEO to Authorize Certain Actions under the National Environmental Policy Act (NEPA) if the Authority Receives NEPA Assignment

Summary of Recommended Action

Staff recommends that the Board revise the existing delegation of authority to the Chief Executive Officer (CEO) to authorize the CEO to take certain actions under the National Environmental Policy Act (NEPA), if the Authority receives NEPA assignment from the Federal Railroad Administration (FRA). Generally, the revised delegation proposed by staff would authorize the CEO to take actions under NEPA consistent with and equivalent to actions the CEO takes under CEQA. Presently, the CEO takes nearly all CEQA actions except identifying the proposed project/preferred alternative, approving new alignments for implementation/construction, and certifying associated environmental impact reports (the authority to take these actions remains with the Board). The proposed revised delegation would delegate to the CEO the authority to take equivalent actions under NEPA, should the Authority receive NEPA assignment.

Background

As previously discussed with the Board (November 2017 presentation by CalSTA Secretary Annis), the Authority and CalSTA have been in productive discussions with FRA for nearly a year about obtaining assignment of FRA's responsibilities under NEPA as they relate to the California high-speed rail program. NEPA assignment means, effectively, that the Authority would step into FRA's shoes as the lead agency under NEPA, including being assigned the power to formally issue and approve NEPA environmental analysis documents and associated decision documents.

Authority staff believes that all procedural and substantive prerequisite steps to obtain assignment from FRA have been completed, except final decision by FRA to sign the Memorandum of Understanding that would formally effectuate assignment.

The Authority CEO presently does not have delegated authority from the Board to take formal issuance and approval actions under NEPA. However, there are several formal NEPA actions scheduled to occur in coming months, such as issuance of the Central Valley Wye Draft Supplemental Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and issuance of the Fresno – Bakersfield Locally Generated Alternative (LGA) Final Supplemental EIR/EIS (regarding the high-speed rail alignment into Bakersfield). If

the Authority receives NEPA assignment from FRA prior to these scheduled events, the CEO will need delegated authority from the Board to timely act to keep these events on schedule.

Prior Board Action

Over the years since formation of the Authority, the Board has granted various delegated authority to the CEO. The operative version was approved by the Board in 2011, which was last updated by the Board in January of 2014. It is known as Board Policy – HSRA11-001 (Amended January 14, 2014), and is attached hereto with the staff-proposed addition shown in underlining.

Discussion

In light of the above, staff recommends adding to the present CEO delegation the following, as a new subsection H.2.5, as shown in the attached proposed revised delegation:

“If the FRA assigns its responsibilities under NEPA and other federal environmental laws to the State, acting through CalSTA and the Authority, pursuant to a memorandum of understanding (MOU) with the FRA executed under 23 U.S.C. 327 and the associated application the State submitted to FRA on January 31, 2018, the CEO shall have the authority to take all actions necessary to implement the responsibilities of the Authority under such NEPA assignment MOU, including but not limited to issuing public notices, signing and issuing draft and final environmental documents (including any environmental assessment (EA), environmental impact statement (EIS), or supplement thereto), holding public meetings to inform the public and accept public comment, executing decision documents approving project elements and verifying that associated environmental documentation complies with NEPA (including any Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)), and communicating with other agencies and stakeholders; provided, however, that the CEO shall obtain Board concurrence regarding identification of a preferred alternative, and shall obtain Board approval to execute any ROD that approves any preferred alternative and that verifies the associated NEPA document as compliant with NEPA (except that the CEO may approve, via CE, FONSI, ROD, or other appropriate NEPA document, modifications to any alternative previously approved by the Board when such modifications do not require a supplemental EIS).”

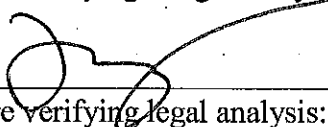
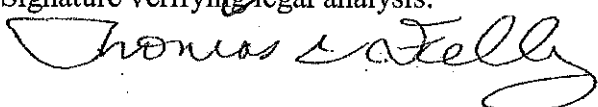
By way of example, this delegated authority would allow the CEO to issue the Central Valley Wye and LGA documents mentioned above, but would not allow the CEO to approve under NEPA the high-speed rail alignment through the Wye area or into Bakersfield. Those approval decisions would remain with the Board. Similarly, this delegated authority would reserve to the Board the identification of a preferred alternative alignment in the four Southern California sections and the two Northern California sections still pending selection for inclusion in their respective Draft EIR/EISs. These powers and limitations align with the CEO’s present powers and limitations acting under CEQA.

Legal Approval

The Legal Office has confirmed the Authority’s legal ability to grant the CEO the delegated authority as proposed in this item.

Budget and Fiscal Impact

The act of delegation, by itself, does not have a budget impact.

REVIEWER INFORMATION	
Reviewer Name and Title: Russell Fong Chief Financial Officer	Signature verifying budget analysis: 
Reviewer Name and Title: Tom Fellenz Chief Counsel	Signature verifying legal analysis: 

Recommendation

Staff recommends Board approval of the staff-proposed delegation, to enable the CEO to act under NEPA, should the Authority receive NEPA assignment from the FRA. Staff recommends such approval now, rather than waiting until after NEPA assignment is received, to help ensure the Authority's environmental analysis and public engagement schedule maintains the current schedule for completion.

Attachments

- Draft Resolution #HSRA 18-14
- Resolution HSRA #14-01
- Board Policy - HSRA11-001 (Amended January 14, 2014), with proposed NEPA assignment delegated power added