



## California High-Speed Rail BRIEFING: September 10, 2020, Agenda Items # 6, 10, 11, 12

**TO:** Acting Chairman Richards and Authority Board Members

**FROM:** Gary Kennerley, Northern California Director of Projects  
Mark A. McLoughlin, Director of Environmental Services

**DATE:** September 10, 2020

**RE:** Consider certifying the Merced to Fresno Section: Central Valley Wye Final Supplemental Environmental Impact Report/Environmental Impact Statement and taking actions as required by the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) for Selecting the SR 152 (North) to Road 11 Wye Alternative for the Central Valley Wye portion of the Merced to Fresno Section

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### Summary

Staff recommends that the California High-Speed Rail Authority (Authority) Board of Directors (Board) take three actions:

- Certify that the *Merced to Fresno Section: Central Valley Wye Final Supplemental Environmental Impact Report/Environmental Impact Statement* (Final Supplemental EIR/EIS) has been completed in compliance with the California Environmental Quality Act (CEQA) (Agenda Item #10).
- Approve the Preferred Alternative—the SR 152 (North) to Road 11 Wye Alternative—and related CEQA findings of fact, overriding considerations, and a mitigation monitoring and enforcement plan (MMEP) (Agenda Item #11).
- Direct the Authority Chief Executive Officer to issue a Supplemental Record of Decision (ROD) under the Authority's National Environmental Policy Act (NEPA) Assignment responsibilities, identifying the SR 152 (North) to Road 11 Wye as the Selected Alternative and documenting compliance with other related federal environmental laws, and including mitigation measures as identified in the MMEP (Agenda Item #12).

### Background

As part of the Merced to Fresno Section of the statewide California High-Speed Rail System, the Central Valley Wye would create a connection between the east-west **San Jose to Merced Section** to the west and the north-south alignment of the **Merced to Fresno Section** to the east.

The Board certified the *Merced to Fresno Section: Final EIR/EIS* (Merced to Fresno Final EIR/EIS) under CEQA on May 3, 2012. That document fully studied two wye alternatives (Avenue 21 and Avenue 24), along with three north-south alignment alternatives (UPRR, BNSF, and Hybrid).

The Board approved the Hybrid Alternative as the north-south alignment, and the Authority filed a Notice of Determination on May 3, 2012. The Federal Railroad Administration (FRA) issued a ROD on September 18, 2012, and the Surface Transportation Board issued a ROD on June 13, 2013.

Although the approvals above selected the Hybrid Alternative as the north-south alignment of the Merced to

Fresno Section, both agencies deferred a decision on the area known as the “wye connection,” which is the east-west connection between the San Jose to Merced Section and the north-south alignment of the Merced to Fresno Section, to allow for additional consideration and analysis of wye alternatives.

Between 2012 and 2018, the Authority, working with federal, state, and local agencies, undertook an extensive process to develop and refine several wye alternatives. The Final Supplemental EIR/EIS Chapter 9, Public and Agency Involvement, details these efforts, which included preparation and distribution of multiple supplemental alternatives analyses, as well as Checkpoint documents prepared to integrate the development of alternatives under NEPA and Section 404 of the Clean Water Act. Through this process, the Authority preliminarily considered 17 wye alternatives.

Through an iterative evaluation process, the 17 wye alternatives were reduced to four alternatives for detailed environmental review (see Figure 1):

- SR 152 (North) to Road 13 Wye
- SR 152 (North) to Road 19 Wye
- Avenue 21 to Road 13 Wye
- SR 152 (North) to Road 11 Wye

The four wye alternatives carried forward each share common end points (i.e., termini) to allow for a meaningful comparison of engineering and environmental considerations. The shared termini of the four wye alternatives are at Henry Miller Road/Carlucci Road on the west, Ranch Road/SR 99 on the north, and Avenue 19 near Madera Acres on the south.

The *Merced to Fresno Section: Central Valley Wye: Draft Supplemental EIR/EIS* (Draft Supplemental EIR/EIS) provides full environmental analysis of these four wye alternatives. The document supplements the 2012 Merced to Fresno Final EIR/EIS by providing additional environmental analysis of alternatives in the geographically limited area of the Central Valley where an alignment decision was deferred. On May 3, 2019, the Authority published the Draft Supplemental EIR/EIS, initiating a public review period, pursuant to CEQA, that concluded on June 20, 2019.

On July 23, 2019, the State of California and FRA finalized the NEPA Assignment Memorandum of Understanding (NEPA Assignment MOU), which assigns to the Authority most responsibilities formerly held by FRA regarding the California High-Speed Rail System’s federal environmental review and approval process. The NEPA Assignment MOU empowers the Authority to perform NEPA review and authorization for all ongoing and new environmental documents—including documents that were not final for distribution as of the publication date of the MOU—for the remaining high-speed rail project sections, as well as other passenger rail projects that directly connect to the high-speed rail system. Pursuant to the NEPA Assignment MOU, the Authority circulated the Draft Supplemental EIR/EIS for a 45-day NEPA review period between September 13, 2019, and October 28, 2019.

The contents of the Draft Supplemental EIR/EIS for the CEQA and NEPA distributions were identical, with the exception of different prefatory inserts.

- Volume I: Report
  - Introductory text about the Merced to Fresno Section, the Central Valley Wye, and the supplemental environmental process
  - Detailed description of the Central Valley Wye and all supporting facilities, including electrical interconnections and network upgrades and local roadway modifications
  - Detailed environmental impacts and mitigation analysis of the four Central Valley Wye alternatives across numerous environmental resource areas, including biological resources and wetlands, noise and vibration, aesthetics and visual resources, air quality and global climate change, and cultural resources
- Volume II: Technical Appendices
  - Technical appendices supporting Volume I

- Volume III: Alignment Plans
  - Design drawings and alignment plans/map upon which the environmental analysis is based

On June 18, 2019, the California Fish and Game Commission provided notice that four bumble bee species are candidate species as defined by Section 2068 of the Fish and Game Code. One such species, the Crotch bumble bee (*Bombus crotchii*) is assumed to be present in the resource study area for the Central Valley Wye alternatives based on historic records and the presence of suitable habitat for the species. Accordingly, on March 13, 2020, the Authority published the *Merced to Fresno Section: Central Valley Wye: Revised Draft Supplemental EIR/Second Revised Draft Supplemental EIS, Biological Resources Analysis* (Revised/Second Draft Supplemental EIR/EIS) for a 45-day public review concluding on April 27, 2020.

The Revised/Second Draft Supplemental EIR/EIS incorporated updates to Section 3.7, Biological Resources and Wetlands, of the Draft Supplemental EIR/EIS to acknowledge the potential presence of Crotch bumble bee in the resource study area for the Central Valley Wye alternatives, identify impacts, and include mitigation measures. The Revised/Second Draft Supplemental EIR/EIS indicated that, with the incorporation of mitigation measures, none of the Central Valley Wye alternatives would have a significant impact on the Crotch bumble bee. Based on a review of the record and background evidence, no other resource sections of the Draft Supplemental EIR/EIS needed to be updated, so the Revised/Second Draft Supplemental EIR/EIS consisted primarily of a revised Section 3.7 and an updated technical appendix.

During the two public review periods for the Draft Supplemental EIR/EIS and the public review period for the Revised/Second Draft Supplemental EIR/EIS, the Authority received approximately 731 individual comments (contained in approximately 82 submissions) from individuals, government agencies, and businesses/organizations.

The greatest number of comments were received from local agencies, particularly the Wye Madera County Task Force, the City of Chowchilla (also part of the Wye Madera County Task Force), and local school districts. In response to these wide-ranging comments, the Authority conducted several in-person review workshops with the Wye Madera County Task Force and school districts to go over key comments raised by these parties and prospective resolution of outstanding concerns.

A substantial portion of comments were also received from people living in the communities of Fairmead and Chowchilla, including those who own or operate farms in the area. These commenters expressed concern about community effects as well as effects on agricultural operations and infrastructure, particularly irrigation infrastructure.

The California Department of Fish and Wildlife also submitted detailed comments during the spring 2019 CEQA distribution of the Draft Supplemental EIR/EIS and the spring 2020 distribution of the Revised/Second Draft Supplemental EIR/EIS, suggesting numerous revisions to clarify and improve impact avoidance and mitigation features (IAMFs) and mitigation measures for biological resources.

The Final Supplemental EIR/EIS is the next step in the environmental review process to select a wye connection. The Final Supplemental EIR/EIS was prepared as a joint document to meet all pertinent requirements of both CEQA and NEPA. The Authority published the Final Supplemental EIR/EIS on August 7, 2020.

The Final Supplemental EIR/EIS is considered a “full” final, because it consists of the same Volumes I through III as the Draft Supplemental EIR/EIS, each with text revisions as detailed below. The Final Supplemental EIR/EIS also includes a fourth volume (Volume IV), which includes responses to the comments received during the total of three public review periods for the Draft Supplemental EIR/EIS (both CEQA and NEPA circulations) as well as the Revised/Second Draft Supplemental EIR/EIS.

The Final Supplemental EIR/EIS incorporated text and figure changes, including the following topics and issues:

- Acknowledgment of the Authority receiving NEPA Assignment from FRA
- Pacific Gas & Electric-recommended changes to Central Valley Wye-related electrical interconnections and network upgrades; corollary changes to environmental analysis across all resource topics
- Revisions to the discussion of the Crotch bumble bee, including mitigation measures, based on

regulatory agency recommendations

- Revisions to one of the proposed mitigation measures for the community of Fairmead
- Text changes throughout all chapters as needed to reflect updates to laws, regulations, and orders, including but not limited to:
  - Addressing vehicle miles traveled (VMT) related to the implementation of Senate Bill 743
  - Adding/clarifying information on health effects of air pollution emissions
  - Adding clarifying detail to the Authority’s IAMFs
- Other non-substantive edits (grammar, punctuation, headers and footers, etc.)

For a more comprehensive list of such changes in Volumes I and II, please refer to Sections S.1.2 and S.1.3 of the Final Supplemental EIR/EIS Summary.

CEQA does not require public review and comment of a Final EIR. Instead, CEQA requires that the proposed response to any comment received from a public agency be provided to that public agency at least 10 days prior to Board certification of the Final EIR. The Authority satisfied that requirement by posting the Final Supplemental EIR/EIS on its website and providing associated notice 35 days before the proposed certification on September 10, 2020.

NEPA requires that a Final EIS be made publicly available at least 30 days prior to the NEPA lead agency issuing a ROD. The Authority satisfied this requirement by issuing the Final Supplemental EIR/EIS more than 30 days in advance of proposed consideration of the Supplemental ROD.

At the August Board meeting, the Board was presented with information about the Merced to Fresno Section project history and the environmental process for the Central Valley Wye as a supplemental environmental document to the Merced to Fresno Final EIR/EIS (August Board Meeting Agenda Item #2). This information was to prepare the Board for the decisions to be made at this September Board meeting.

### **Prior Board and FRA Action**

The Board certified the Merced to Fresno Final EIR/EIS under CEQA on May 3, 2012, approving the Hybrid Alternative as the high-speed rail alignment outside the wye (Resolution HSRA# 12-19 and 12-20). The Authority filed a Notice of Determination on May 3, 2012. The FRA issued a ROD on September 18, 2012, which also selected the Hybrid Alternative as the north-south alignment outside the wye. As noted above, both the Authority and FRA deferred a decision on the wye to allow for more consideration and analysis.

In January 2017, the Board concurred with Authority staff’s recommendation to identify the SR 152 (North) to Road 11 Wye as the Preferred Alternative (Resolution HSRA# 17-01). In September 2019, the Board delegated authority to the Chief Executive Officer to include a previously adopted state Preferred Alternative as the NEPA Preferred Alternative in a Draft EIS. Accordingly, the Draft Supplemental EIR/EIS identified SR 152 (North) to Road 11 Wye as the Preferred Alternative.

### **Discussion**

The purpose of CEQA is to ensure the public and government decision-makers are informed, through CEQA documents, of the potential environmental consequences of a proposed government action before the decision-maker takes action. Public comment on a draft EIR helps provide information on the proposed project to the public and feedback to decision-makers. NEPA serves a similar purpose for proposed federal actions by a NEPA lead agency through public comment on a draft EIS.

With the Final Supplemental EIR/EIS issued, the Board can consider taking action under CEQA to approve the Preferred Alternative, which is the SR 152 (North) to Road 11 Wye Alternative. CEQA requires two discrete steps for approval.

The first CEQA step (agendized as Item # 10) is for the Board to certify that the Final Supplemental EIR/EIS is adequate as an informational document about the environmental consequences of the proposed project. The Board’s certification takes the form of draft Resolution #HSRA 20-06. This certification states that the Final Supplemental EIR/EIS has been completed in compliance with CEQA, the Final Supplemental EIR/EIS has been presented to the Board as the Authority’s decision-making body, the Board has reviewed and considered

the information contained in that document prior to approving the project, and that the Final Supplemental EIR/EIS reflects the Authority's independent judgment and analysis. Certification of the Final Supplemental EIR/EIS under CEQA is a prerequisite to approving the project, but certification by itself does not approve the project.

The second CEQA step (agendized as Item # 11) is for the Board to consider whether to approve the Preferred Alternative, in light of the environmental consequences disclosed in the Final Supplemental EIR/EIS, considered in the context of the 2012 Merced to Fresno Final EIR/EIS. The Board's approval takes the form of draft Resolution #HSRA 20-07. This step also involves making written acknowledgments (called "CEQA Findings") about the environmental consequences (as stated in the Final Supplemental EIR/EIS) that will flow from the approval, and requiring feasible mitigation measures to minimize those consequences. For environmental consequences that cannot be mitigated to a less than significant level, this step also involves making written conclusions that the benefits of implementing the project outweigh the unmitigated consequences—called a CEQA Statement of Overriding Considerations (SOC). The CEQA Findings, SOC, and a mitigation chart (which the Authority calls a Mitigation Monitoring and Enforcement Plan, or MMEP<sup>1</sup>) are included in Exhibits A and B to the draft CEQA project approval Resolution.

Pursuant to the Authority's NEPA Assignment, the Board will also take a third step (agendized as Item # 12) to consider whether to direct the Authority Chief Executive Officer to issue a Supplemental ROD (Exhibit C). (A draft Supplemental ROD is part of the materials provided prior to this meeting.) Under NEPA and the NEPA Assignment MOU, the draft Supplemental ROD indicates selection of the Preferred Alternative—SR 152 (North) to Road 11 Wye Alternative—as the alternative that best serves the purpose and need for the Central Valley Wye and minimizes economic, social, and environmental impacts. The draft Supplemental ROD also documents federal decisions on the project, such as required determinations under several federal laws, including but not limited to Section 4(f) of the Department of Transportation Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act. This direction to issue a Supplemental ROD takes the form of draft Resolution HSRA# 20-08.

The requested actions, therefore, involve:

- Board certification of the Final Supplemental EIR/EIS as an adequate informational document in compliance with CEQA.
- Board approval of SR 152 (North) to Road 11 Wye as the Central Valley Wye alignment for the Merced to Fresno Section; this approval would include adoption of CEQA Findings, SOC (Exhibit A), and MMEP (Exhibit B).
- Board direction for the Authority Chief Executive Officer to issue a NEPA Supplemental ROD (Exhibit C) for the project, under the NEPA Assignment MOU, identifying the SR 152 (North) to Road 11 Wye Alternative as the Selected Alternative and consistent with the draft Supplemental ROD included with materials for this meeting. The Supplemental ROD will also certify compliance with several related federal environmental and resource protection laws and will incorporate the MMEP (Exhibit B) as a condition of approval.

The Final Supplemental EIR/EIS has undergone extensive preparation efforts, including thorough consideration of the comments received on the Draft Supplemental EIR/EIS and the Revised/Second Draft Supplemental EIR/EIS. Staff recommends that the Final Supplemental EIR/EIS is an adequate informational document in compliance with CEQA, NEPA, and other pertinent federal and state regulations. As explained in Chapter 8 of the Final Supplemental EIR/EIS, the SR 152 (North) to Road 11 Wye Alternative is the Preferred Alternative and an appropriate approval choice because, among the other alternatives considered, this alignment would require the fewest residential displacements (62 residences and an estimated 191 people, compared to up to 119 residences and an estimated 391 people) and the least impact on Important Farmlands and waters of the United States.

Additionally, on October 24, 2019, the United States Department of the Interior concurred with the Section 4(f) evaluation as presented in the Draft Supplemental EIR/EIS. The Draft Supplemental EIR/EIS indicated a

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<sup>1</sup> The MMEP is consistent with CEQA requirements for mitigation monitoring and reporting as set forth in Section 15097 of the CEQA Guidelines (Title 14 California Code of Regulations, Division 6, Chapter 3).



Section 4(f) use of the Robertson Boulevard Tree Row after concluding there are no feasible or prudent avoidance alternatives and that the SR 152 (North) to Road 11 Wye Alternative is the alternative that would cause the least overall harm.

### **Legal Approval**

The Office of Chief Counsel has verified that the Board is legally authorized to take the actions requested by the Board items. NEPA and CEQA attorneys under the direction of – and in coordination with - the Chief Counsel have been involved in the development of the Final Supplemental EIR/EIS as well as the certification and approval decision documents presented for consideration. We are not aware of any outstanding issues from a NEPA or CEQA perspective as to the Central Valley Wye decision documents that would prevent consideration and action by the Board. Furthermore, as to the draft Supplemental Record of Decision document, we conclude that it is legally sufficient as required by NEPA, the NEPA Assignment MOU (and associated application), and the FRA Procedures for Considering Environmental Impacts.

### **Budget and Fiscal Impact**

Construction costs for the Central Valley Wye portion of the Merced to Fresno Section are outside the scope of the 2020 Program Baseline approved by the Authority’s Board on June 25, 2020, and therefore do not affect the currently authorized capital outlay budget.

#### **2020-21 Fiscal Year Budget Impact**

<b>Contract Name</b>	<b>Contract Number</b>	<b>Contract FY Contract Budget</b>	<b>Budget Change</b>	<b>Funding Source</b>
N/A	N/A	N/A	N/A	N/A

#### **Total Program Budget Impact**

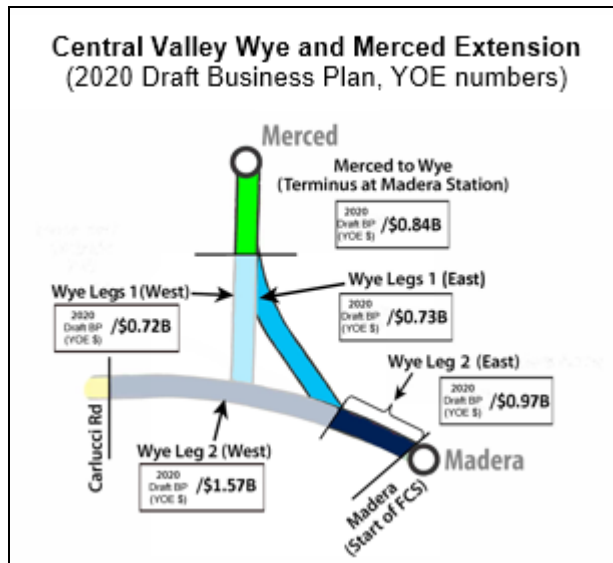
<b>Contract Name</b>	<b>Contract Number</b>	<b>Contract FY Contract Budget</b>	<b>Budget Change</b>	<b>Funding Source</b>
N/A	N/A	N/A	N/A	N/A

### **Capital Cost Estimate**

The estimated capital cost of the SR 152 (North) to Road 11 Wye Alternative is \$3.6 billion in 2015 dollars<sup>2</sup> and \$4.0 billion in Year of Expenditure (YOE) dollars. This alternative is consistent with the alignment identified as part of the statewide Phase 1 high-speed rail program in the Draft 2020 Business Plan for the Wye Legs 1 and Wye Leg 2 project segments, although the Business Plan capital estimate reflects structure design and profile design optimizations. Combined, the Draft 2020 Business Plan low and high capital cost estimate range for Wye Legs 1 and Wye Leg 2 project segments is \$2.9 billion to \$4.1 billion with a base estimate of \$3.6 billion in 2019 dollars and a base estimate of \$4.0 billion in YOE dollars.

<b>in millions</b>	<b>CVY EIR/EIS (2015\$)</b>	<b>CVY EIR/EIS (YOES)</b>	<b>Draft 2020 BP (YOES)</b>	<b>MCD-BFD Baseline (YOES)</b>
<b>Wye Legs 1</b>	<b>1,285</b>	<b>1,469</b>	<b>1,449</b>	<b>730</b>
Wye Legs 1 East			730	730
Wye Legs 1 West			719	N/A
<b>Wye Leg 2</b>	<b>2,328</b>	<b>2,571</b>	<b>2,537</b>	<b>971</b>
Wye Leg 2 East			971	971
Wye Leg 2 West			1,566	N/A
<b>CVY TOTAL</b>	<b>3,613</b>	<b>4,040</b>	<b>3,986</b>	<b>1,701</b>
<b>Merced to Wye</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>835</b>
			<b>MERCED TO MADERA EXTENSION TOTAL</b>	<b>2,536</b>

<sup>2</sup> Merced to Fresno Section: Central Valley Wye Supplemental EIR/EIS – Capital Cost Estimate Report (October 2016)



REVIEWER INFORMATION	SIGNATURE
Reviewer Name and Title: <b>Brian Annis,</b> <b>Chief Financial Officer</b>	Signature verifying budget analysis: <b>Original Signed September 1, 2020</b>
Reviewer Name and Title: <b>Alicia Fowler,</b> <b>Chief Counsel</b>	Signature verifying legal analysis: <b>Original Signed September 1, 2020</b>

## Recommendations

Staff recommends that the Board adopt the attached draft resolutions #HSRA 20-06, #HSRA 20-07 and #HSRA 20-08:

- HSRA# 20-06 certifies the completeness and adequacy of the Merced to Fresno Section: Central Valley Wye: Final Supplemental EIR/EIS for compliance with CEQA.
- HSRA# 20-07 approves the State Route 152 (North) to Road 11 Wye alignment; adopts the CEQA Findings of Fact and Statement of Overriding Considerations (Exhibit A), Mitigation Monitoring and Enforcement Plan (Exhibit B); and directs staff to file a CEQA Notice of Determination with the State Clearinghouse.
- HSRA# 20-08 directs the Authority Chief Executive Officer to issue a Supplemental ROD (Exhibit C) consistent with the requirements of the NEPA Assignment MOU, identifying the SR 152 (North) to Road 11 Wye Alternative as the Selected Alternative and indicating compliance with associated federal environmental and resource protection laws (Exhibit B).

## Attachments

Resolution HSRA# 20-06

Resolution HSRA# 20-07

Resolution HSRA# 20-08

Exhibit A: Merced to Fresno Section: Central Valley Wye Findings of Fact and Statement of Overriding Considerations (Attachment A to Resolution HSRA # 20-07)

Exhibit B: Merced to Fresno Section: Central Valley Wye MMEP (Attachment B to Resolution # 20-07)

Figure 1: Central Valley Wye Alternatives

