



March 4, 2019

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Ronald L. Batory, Administrator
Federal Railroad Administration, West Building
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01

Dear Mr. Batory:

I write in response to your letter dated February 19, 2019, stating that the Federal Railroad Administration (FRA) intends to terminate Cooperative Agreement No. FR-HSR-0118-12-01-01 (FY10 Agreement or Agreement) and de-obligate the \$928,620,000 obligated under the Agreement. Per the direction in your letter, I have attached a comprehensive and formal response to the issues raised which, as requested, is directed to Ms. Jamie Rennert, FRA Director of Program Delivery.

There are two facts that should be emphasized at the outset. First, Governor Newsom is committed to building a transformative, visionary high-speed rail project in full compliance with federal grant requirements. Second, the California High Speed Rail Authority is making progress, and has met its commitments under its federal grant agreements.

Governor Newsom's recent public expression of support for delivering high-speed rail in California does not constitute a fundamental change in the purpose of the overall project for which federal funding was awarded. In fact, the Governor described a pragmatic approach to using the funding now committed to this project to get high-speed trains on the ground in California as soon as possible—by completing an early high-speed rail link operating in the Central Valley between Merced and Bakersfield; continuing our regional projects in the north and south; and finishing the required environmental clearances on all Phase 1 segments from San Francisco to Los Angeles/Anaheim. Laying this groundwork will enable us to ultimately connect a revitalized Central Valley to Silicon Valley and Southern California.

This approach ensures the assets we are constructing with federal funding have the maximum independent utility while we advance project development work elsewhere and pursue additional funding to complete the entire system. As the FRA has already agreed, this building-block approach is appropriate in a constrained funding scenario.

The Governor's proposal is wholly consistent with the concept for an early interim service that has been submitted to and reviewed by the FRA in 2013, 2014, and 2016. In fact, the Governor's approach would expand the initial construction segment selected by the FRA in 2010 to maximize interim ridership and regional connectivity. This is achieved by extending the route to connect urban centers (Merced-Fresno-Bakersfield) and to provide important transit connectivity to the Altamont Corridor Express (ACE) and Amtrak traveling to the Bay Area as well as

GAVIN NEWSOM
GOVERNOR



Sacramento in the north and to bus services traveling from Bakersfield to Los Angeles in the south. A more detailed analysis and implementation plan is forthcoming in the Project Update Report we will submit to the California Legislature on May 1, 2019.

The Governor's proposal for high-speed rail's early operations in the Valley would be tangible and transformative for Californians. Importantly, it would not require any additional funding from the federal government. In other words, under our current funding plan, the State, not the federal government, will bear the cost of expansion to downtown Bakersfield and to Merced.

In support of this vision, the Authority is making measurable progress towards the objectives of the federal grant agreements. The history of our relationship is marked by effective collaboration between California and the FRA to advance the project. We have achieved progress by working together to constructively address challenges on the ground. Indeed, the funding agreements we have executed with you have been amended six times already to ensure we can achieve project objectives in the face of various challenges.

This kind of collaboration is valuable and must be maintained. Through this approach, we have:

- Advanced construction on the 119-mile segment selected for funding by the FRA in 2010 and 2011 so that:
 - More than 2,600 workers in the Central Valley have gone to work constructing high-speed rail;
 - 488 small businesses have worked on the project;
 - More than 20 construction sites are underway and 4 structures completed;
 - State Route 99 realignment near Fresno has been built with over 1,750 craft laborers and 56 small businesses; and
 - Nearly \$6 billion in economic output has been achieved.
- Met the federal statutory deadline for the expenditure of more than \$2.5 billion in federal funds appropriated by Congress and directed to this project;
- Progressed the environmental documents for the entire Phase 1 project from San Francisco-Los Angeles/Anaheim so that we are on schedule to complete this work consistent with our federal grant agreement; and
- Improved our project controls (working with the FRA) to identify project risks that require active mitigation and management to limit impacts on cost, scope and schedule.

In light of this progress, I feel it is imperative to communicate directly to you that termination of the FY10 Agreement would be unwarranted, unprecedented, and harmful to the Project and to the people of the Central Valley, the State of California, and the nation.

Moreover, any "clawback" of federal funds already expended on this project would be disastrous policy. It is hard to imagine how your agency—or the taxpayers—might benefit from partially constructed assets sitting stranded in the Central Valley of California. It is equally difficult to imagine the policy benefit of sending home the more than 2,600 craft workers, men and women who have been dispatched to work on

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the 119-mile segment now under construction in the Central Valley, one of the nation's most economically distressed regions. Similarly, there is no benefit to sending "stop work" notices to the 488 small businesses, 15 of which are from outside of California, contracted to work on this project. This infrastructure legacy would forever be a travesty.

There is a better way forward. Let's restore the functional relationship between our agencies so progress on this project and the related economic benefits can continue, and the important environmental and mobility benefits can be realized at the earliest possible time.

The challenges we confront today are not new, nor are they caused by unilateral decisions by the Authority. They are the product of joint decisions made by our agencies over many years. Where this project commenced construction was determined by the FRA through its grant awards in 2010 and 2011. The timing of executing construction contracts and even the groundbreaking for the project involved the full participation and approval of the FRA. The recent decision to hold back federal participation in our joint environmental review process—negatively affecting the project schedule—was made by the FRA.

While the challenges are not new, overcoming them does require doing business differently—here and at the FRA. Toward that end, Governor Newsom implemented governance changes and ordered enhanced transparency measures so taxpayers, policymakers and our partners (including the FRA) can easily see how public dollars are being spent and how the project is progressing. My board fully supports this direction, and we have started implementing enhanced transparency measures like new quarterly reporting to the Legislature and greater public access to project documents available online. We have also been working with FRA staff to improve project controls, so we can jointly measure, monitor and mitigate project risks. Continuing this work together is essential to avoid repeating mistakes of the past.

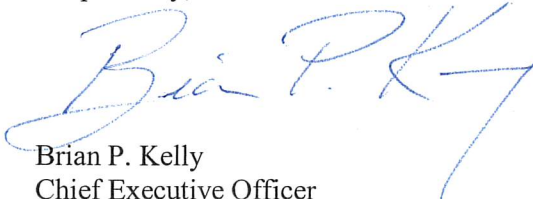
You and I, in our respective jobs for just over a year now, live with the implications of prior decisions. Nevertheless, we continue to make progress in the face of complex challenges. This Authority and your agency are closer than we ever have been on a shared perspective of the project risks that must be managed to be successful.

I am committed to successfully managing those risks, and I am requesting your partnership to do so. I respectfully ask that you do not terminate the Cooperative Agreement, but instead, as the attachment details, join me to lead our agencies in a structured process to share facts, clarify misunderstandings, and resolve disagreements.

Our goal here should be the successful delivery of America's first truly high-speed rail service. You have California's commitment to engage in good faith and get this important work done.

Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink that reads "Brian P. Kelly". The signature is stylized and written in a cursive-like font.

Brian P. Kelly
Chief Executive Officer

Attachment