

California high-speed rail faces delays as high-stakes trial begins

Mike Rosenberg, Bay Area News Group, 5-31-13

SACRAMENTO -- High-speed rail officials acknowledged Thursday that they almost certainly won't break ground on the \$69 billion project as planned in July after hitting some last-minute bumps in the road. And even more delays are possible as a court battle begins that could wipe out voters' approval of the bullet train.

On Friday morning, opponents from the Bay Area and Central Valley, led by the former chairman of the project, will begin arguing in Sacramento Superior Court that the train has run so far off-track that a judge should take the extraordinary step of hitting the brakes on construction plans. They want to invalidate the \$10 billion bond measure voters approved in November 2008 because the project has since doubled in cost while ridership estimates have dwindled and ticket price projections have shot up.

What's more, Gov. Jerry Brown and other Democratic heavyweights are hurriedly lobbying an obscure federal agency to approve high-speed rail construction -- an unexpected obstacle that also threatens to slow the bullet train. And the state must soon finish navigating a delicate process to award the first lucrative construction bid and buy out several unhappy property owners along the route.

"We certainly know that there are challenges that we're facing, but we've been able to make significant progress," said Annie Parker, a spokeswoman for the California High-Speed Rail Authority, noting that the agency has in recent months swatted away other lawsuits and identified a preferred contractor to build the first segment near Madera.

The project is already a year behind schedule. But Parker said they hope bulldozers will reach the Central Valley by late summer.

Further delays, however, could jeopardize \$3 billion in funding from the federal government, which has required that the first leg of construction be finished by September 2017. More delays could also push back the start of initial Merced-to-San Fernando Valley service targeted for the end of this decade.

Opponents say they don't see construction starting anytime soon.

"It's a fiction to say, 'Oh, maybe late summer.' They don't know," said former state Sen. Quentin Kopp of San Francisco, the rail authority's former longtime chairman who has turned against the project and is the star witness in the upcoming trial. "They're going to have a heck of a time with all these legal obstacles."

The most pressing matter right now is the trial beginning Friday that questions the legality of the voter-approved bond measure, Proposition 1A.

The rail authority argues that it is carrying out the will of the voters, starting with \$1 billion to lay the groundwork upon which the first

But there are several provisions within the voter-approved bond act that opponents argue have not been met, such as securing enough money and environmental clearances before starting to build a project that currently has a \$55 billion shortfall. Also in dispute are provisions of the bond act guaranteeing the train will run without a taxpayer subsidy and that it can speed between San Francisco and Los Angeles in 2 hours and 40 minutes.

"We want to make sure that we as Californians don't end up with something we didn't ask for," said Kings County rail opponent Aaron Fukuda, one of two people joining the county in the suit.

Opponents fear the state won't be able to find the rest of the money needed to build the full rail line, leaving the first \$6 billion, 130-mile stretch of track approved last year by Brown and the Legislature as an abandoned eyesore.

The rail authority declined to comment on the case, but it has managed for five years to repeatedly sidestep other lawsuits that have focused on the negative environmental impacts of the bullet train.

Still, the Bay Area attorneys representing the plaintiffs in the latest case note that this is the first time anyone has gone to court to challenge the 2008 bond measure.

"This is not the terminator, (but) if we win on Friday, it will certainly stall this project for a while," said Oakland-based attorney Stuart Flashman, lead attorney for the plaintiffs.

"I think our case is ... potentially a real blockbuster in terms of testing the validity of this project," said Redwood City-based co-counsel Mike Brady.

A ruling on the latest legal showdown is not expected until next week at the earliest. But even if the state wins, it faces more obstacles.

First among them is a bureaucratic review recently filed with the federal Surface Transportation Board, made up of three presidential appointees used to dealing with small freight projects.

The board must approve all new railroad projects in the country before construction can begin and can take months or even years to make rulings. But despite the bullet train's long-planned groundbreaking, California only filed for approval in March after being prompted by opponents led by House railroad committee Chairman Jeff Denham, R-Modesto.

While 13 Republican House members have lobbied against federal approval, Brown and U.S. Sens. Barbara Boxer and Dianne Feinstein have quietly asked for an exemption from the federal agency's lengthy review process. And a ruling is expected within the next two weeks.

Parker, the rail authority's spokeswoman, said officials aren't sweating out the federal review. "I wouldn't say there is a high anxiety level," she said.

The rail authority next week is expected to begin negotiations with Sylmar-based Tutor Perini on the first \$985 million construction contract, which is expected to take several weeks. And the authority must buy up 345 parcels along the bullet train path before building -- and property owners that refuse will force the state into an eminent domain legal process that typically takes months.

"The status of this project," Fukuda said, "is that it's fighting to keep itself moving forward."