

THE SMART DEBACLE



INTRODUCTION

The objective of this presentation is to provide a compelling argument to convince the respective decision makers and others in the Federal, State of California, and Local Governments that recent and significant developments have rendered the Sonoma-Marine Area Rail Transit Agency (SMART) unable to comply with long standing Federal Regulations, thus forbidding their planned passenger train operations over the Northwestern Pacific Railroad alignment. Because of SMART's inability to perform, and other factors listed below, I recommend that the 1/4% sales tax increase stemming from 2008 Measure "Q", to begin April 1, 2009, be postponed and that SMART be prevented from issuing bonds or entering into any other type of indebtedness until SMART is able to comply with all of the required regulations.

BACKGROUND

The Sonoma-Marine Area Rail Transit Project is a public passenger rail project located in San Francisco's North Bay. In 2003, Assembly Bill 2224 created the SMART Special District. The project will provide rail service along 70 miles of the Northwestern Pacific Railroad alignment. Utilizing the publicly owned railroad right of way, the rail project will serve fourteen stations, from Cloverdale in Sonoma County to the San Francisco-bound ferry terminal in Larkspur, Marin County.

In November, 2008 the voters of Marin and Sonoma Counties approved Local Measure "Q", a 1/4% sales tax increase expected to contribute \$890,679,000 over 20 years or 66% of the expected \$1,351,346,000 total SMART revenues from all sources. SMART's



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initial bond offering of \$303,053,000, which is to be repaid by this new tax, is scheduled for June 30, 2009. Other bonds, planned to be issued in 2012 and 2015, total an additional \$42,009,000.

SMART MUST SHARE TRACKS WITH FREIGHT

The publicly owned North Coast Railroad Authority (NCRA) has a perpetual and exclusive easement to operate freight rail service on the same SMART-owned portion of the Northwestern Pacific Railroad alignment on which SMART intends on operating their passenger trains. The NCRA has entered into a contractual agreement with the newly formed Northwestern Pacific Railway (NWP) to operate freight trains over this easement. Because SMART intends on sharing the trackway with the NWP, the agency is, and has always has always known that it will be subject to the regulations of the Federal Railroad Authority (FRA).

SMART REQUIRED TO USE “CRASHWORTHY” RAIL VEHICLES

The specific FRA regulation that SMART is now unable to comply with is found in CFR49 RULE 238.203 which requires that passenger trains that share the tracks with freight trains be designed and built to meet certain “crashworthiness” standards.

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=52a51d5bb13b8857ab8828c6ddfe440f&rgn=div8&view=text&node=49:4.1.1.1.31.3.125.2&idno=49>

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SMART CHOSE TO BANK THEIR ENTIRE PLAN ON THE ONLY MANUFACTURER OF “CRASHWORTHY” VEHICLES

In what may seem by many to be to say the least a “questionable” exercise in judgment, the SMART agency based their entire Funding Plan, Construction plan, Operating Plan, Environmental Impact Study, and Public and Political Outreach Programs on sole sourcing their rail vehicles from the Colorado Railcar Manufacturing Company (CRM), the one and only manufacturer of public transit trains that are FRA approved for “crashworthiness” and satisfy the safety requirements of CFR49 RULE 238.203.

On December 23, 2008, and just 50 days after the voters of Sonoma and Marin Counties passed the SMART tax measure, Colorado Railcar Manufacturing shut down and posted a notice on its Web site saying it had no employees effective Dec. 31. The notice by company CEO Larry Salci said Colorado Railcar was in the process of liquidation.

FRA WAIVER IS POSSIBLE BUT REQUIRES TEMPORAL SEPARATION

However, the FRA does have a process that allows SMART to apply for a waiver based on temporal separation. Temporal separation would require the NWP to operate within a window that maintains a minimum of 4-hours time separation between the running of passenger and freight trains. Today, there are only 4 passenger train systems that currently share track with freight:

Passenger System	Shared Track Miles
Utah Transit Authority, TRAX Sandy Line, Salt Lake City, Utah	12.0
NJ Transit, River LINE	33.0
San Diego Trolley Inc., Blue & Orange Lines, San Diego, Calif.	31.1

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NJ Transit, Newark City Subway, Newark, NJ	0.2
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All of these systems use FRA “compliant “ vehicles, which are no longer available.

http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_130.pdf

There are 6 other passenger systems, including SMART, that already have or plan on obtaining a “non-compliant” vehicle waiver from the FRA by using temporal separation with freight. However, with 72 miles of track to be shared with freight, the SMART operation will present more than 2.18 times the opportunity of the San Diego Blue & Orange Lines, and 360 times the opportunity that the NJ Newark System has for collision whenever a freight train shares the track with a passenger train, with each making an end to end run. Finally SMART’s 72 miles of exposure is more than double the exposure of any other operating, former, pending, or planned shared track operation.

UNFORTUNATELY, FREIGHT TRAINS ARE PLANNED TO RUN DURING THE DAY, AS AGREED TO BY SMART

There are currently no freight trains operating over the trackway in question. However, the NWP plans on commencing freight operations in the Fall, 2009. SMART plans on commencing passenger operations over the same trackway sometime in 2014.

According to SMART, White Paper Number 14, the shared track operating times that SMART and NCRA discussed are:

“When SMART begins passenger train operations, it will control the dispatching of trains along the corridor, as NCRA’s freight easement is subordinate to regularly scheduled passenger train service. In other words, freight operations must work

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cooperatively with SMART's passenger train schedule. In general, this means that freight trains will not be moving through the corridor during the peak morning and afternoon commute hours when SMART is running.

http://www.sonomamarintrain.org/userfiles/file/14_whitepaper_freight.pdf

This is hardly an agreement for "temporal separation".

Furthermore, according to **SMART's EIR of March, 2008:**

"Hours of Freight Operation and System Capacity. Freight train service at the levels proposed by NCRA could be accommodated on the SMART right-of-way during daytime off-peak hours without the need for night trains. This is based on the SMART project proposal of passenger trains every 30 minutes during peak hours and one roundtrip midday train."

http://www.sctainfo.org/pdf/smart/dseir/c6_revised_cumulative_impacts.pdf

Again, not a plan for "temporal separation".

CURRENT STATUS OF SMART'S APPLICATION FOR AN FRA WAIVER

In response to my recent request for the FRA to inform me of the current status of SMART's application, I received the following:

Fri 3/13/2009 9:27 AM

"Sir, we have some waivers out for the San Diego Trolley operation and Sprinter (North San Diego County) in California and others elsewhere (New Jersey Riverline, Utah Transit, etc.). These are generally shared use waivers with freight service relegated to the nighttime hours. I'm attaching our policies for dealing with these situations for your

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information. I can't comment on particular cases. If we receive a waiver request, it will be published for public comment."

Grady Cothen
Deputy Associate Administrator for Safety Standards
FRA/USDOT

NOW SMART CLAIMS TO BE "UNDECIDED"

So, now that CRM is gone, SMART is telling us that they can get a waiver from the FRA that will allow them to use "non-compliant", or less than "crashworthy" vehicles on the same tracks as freight. SMART has recently announced that they are already evaluating vehicles from 6 manufacturers that currently make "non-compliant" vehicles.

Please note the clever way that SMART officials attempt to hide the fact that their Funding Plan, Construction plan, Operating Plan, Environmental Impact Study, and Public and Political Outreach Programs relied on the use of the Colorado Railcar "compliant" DMU, which is now unavailable:

Feb. 5, 2009 *"But even before the SMART Board of Directors actually selects a DMU manufacturer, board members must decide whether SMART will use "compliant" or "non-compliant" vehicles (sometimes known as "heavy" or "light" railcars). Compliant railcars are allowed by the Federal Railroad Administration to share a rail corridor with freight trains. Non-compliant vehicles must be temporally separated from freight trains; in other words, passenger and freight trains are not allowed to use the corridor at the same time."*

<http://www.sonomamarintrain.org/userfiles/file/press%20release%20-%20railcar%20presentations.pdf>

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If this was a legitimate decision, that had not yet been made, how did we get to the point that taxes are soon to be collected and bonds are to be issued?

CONCLUSION

Clearly, the SMART Agency is in trouble. Their decision to allow a single source supplier to have so much control over a \$545 million public transportation project was unconscionable. However, if it discovered that SMART Officials knew about Colorado Railcar's financial troubles 51 days before the November 4, 2008 election, more serious words may describe their actions.

Regardless, until SMART receives a waiver from the FRA, not only will they not be allowed to operate trains over the shared trackway with freight, they will not be able to predict if they will ever be allow to operate those trains.

Finally, I humbly request that you intercede in any way you can to cause the immediate suspension all of SMART's funding sources, other than what is required for administration, planning, and their, yet to be submitted, request to the FRA for the CFR49 RULE 238.203 waiver.

March 17, 2009
Bob Roberts
bohr@stopsmart.org

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ADDENDUM A

FRA WILL WEIGH EXCHANGING SAFETY FOR SOCIAL BENEFITS

According to the Transportation Research Board (TRB), the FRA waiver process weighs the analysis of social benefit against the added safety risk of using “non-compliant” passenger trains in much the same way that an EIS requires the analysis of “Project Alternatives” or the “No Project Alternative”.

http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_130.pdf

SOCIAL BENEFITS ACCORDING TO SMART

According to SMART, “SMART’s environmental studies project that 5,300 passengers per day will ride the train and 7,000 to 10,000 people a day will utilize the bicycle/pedestrian pathway. The rail project will take more than 1.3 million car trips off Highway 101 annually and reduce greenhouse gases, which contribute to global warming, by at least 124,000 pounds per day.”

http://www.sonomamarintrain.org/index.php/what_is_smart/

MY CRITICISM OF “ALLEGED” SOCIAL BENEFITS

The projected 5,300 passengers per day is the result of only 2,650 people taking a round trip, to and from work. The elimination of 1.3 million annual car trips is the result of 2,650 people that drive alone, (no passengers, no carpool), making a round trip to and from work, 245 days a year. According to the MTC, in 2000 there were, on average, 544,000 daily car trips taken in the SMART district.

http://www.sonomamarintrain.org/userfiles/file/1_whitepaper_21stcentury.pdf

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I have never seen a study or any document that even tries to rationalize SMART 's estimated 7,000 to 10,000 daily pathway traffic.

SMART's expected elimination of 124,000 pounds of GHG per day is equivalent to replacing 1 incandescent light bulb with a CFL in 151,000 homes. According to www.census.gov, in 2007 there were 305,763 total housing units in Sonoma and Marin Counties. The cost of 151,000 CFL's is approximately \$302,000.

WAIVER IS NOT JUST A RUBBER STAMP PROCESS

Also, according to the TRB, "The waiver process puts the applicant at the whim of authorities that may identify additional requirements due to unforeseen local circumstances or new lessons learned from novel accident scenarios. FRA may require specific risk analyses for the proposed operations."

http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_130.pdf

The TRB goes on to say, "Since the FRA plays such a dominant role in the project's implementation, initiators are encouraged to engage the agency early in the planning stage and keep local and headquarters representatives apprised of plans, developments or changes".

With the information contained in this document certain to be in the hands of the FRA if and when SMART applies for a waiver, it is doubtful that the FRA will grant SMART a waiver, based on social benefits.

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ADDENDUM B

WHEN DID SMART OFFICIALS KNOW THAT COLORADO RAILCAR WAS HAVING SERIOUS PROBLEMS?

Reflecting the SMART Agency's actions as even more "questionable", CRM had a checkered past and had been dire financial straits for years.

When Florida Department of Transportation officials CRM in early 2008 to build 10 railcars for its new Orlando commuter system, they knew the company was in financial trouble. Nevertheless, the department moved forward with the \$45 million contract.

<http://www2.tbo.com/content/2009/jan/11/na-commuter-rail-falters-again-as-supplier-fails/news-metro/>

In early 2008, the TriMet Commuter Rail System of Portland Oregon took charge of Colorado Railcar's finances. It paid \$1 million in interest to the company's lender and covered unpaid bills, the rent and even the company owner's \$37,000-a-month salary. TriMet contracted with Colorado Railcar in 2005 even though agency officials knew the company was losing money and had little cash. They said they were aware of past business troubles of the company's owner, Tom Rader. Almost from the moment Colorado Railcar started work in late 2006, the company fell behind schedule. Company officials disguised the truth about why and then stalled TriMet by repeatedly claiming that new financing was just about in hand. The company's

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financial condition worsened through 2007, forcing TriMet to speed up payments to help. Company officials diverted some of the money to other work.