

# STAFF REPORT

Board Meeting Date: February 4, 2013

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**ACTION: Board Workshop on Role of the SPTC-JPA**

**AGENDA ITEM  
NO. 2 (revised)**

## **DISCUSSION:** **Workshop on Role of the SPTC-JPA**

### 1. Background

In August 2012, the JPA received a letter from the El Dorado County Board of Supervisors requesting that an item be placed on the JPA Board meeting agenda for discussion of dissolving the JPA.

The JPA Board of Directors considered El Dorado County's request at its the November 5, 2012 JPA Board meeting and determined that that, while the Board does not presently believe that dissolution is warranted, it would be prudent to have a comprehensive discussion of that issue among the JPA Board members and staff, with public input. It was suggested that the conversation could be done in a workshop format and could look at the legal requirements, the value of the JPA to its member agencies and the public, and the potential future role and mission of the JPA. The Board also discussed the need for a report on the legal and operational ramifications of dissolution with respect to obligations under the JPA's governing agreements, preserving the continuity of the rail corridor and compliance with the Rails to Trails Act.

### 2. Purpose, Structure and Powers of the JPA

#### a. Purpose of the JPA

The purpose of the JPA, as set forth in the "JPA Agreement" dated October 8, 1991, is to *"...provide for the acquisition of Southern Pacific Transportation Company's Placerville Branch ("Placerville Branch"), and to provide reciprocal use agreements for transportation and transportation preservation uses as may be desired by the agencies through the creation of a joint powers authority."* (JPA Agreement, Section 3.)

From the time of its creation in October 1991, through the close of escrow in September 1996, the JPA's focus was on acquisition of the right-of-way and improvements (the "Rail Corridor") from the Southern Pacific Transportation Company. In the months preceding the close of escrow, the JPA's member

agencies determined that the JPA should not be dissolved upon acquisition, but should continue to be the legal owner of the Rail Corridor responsible to ensure the Corridor's continuity, to preserve the reciprocal rights of the member agencies, and to provide a forum to prevent and resolve disputes between the member agencies. This action by the member agencies ultimately resulted in the Reciprocal Use and Funding Agreement among the JPA and its member agencies, dated August 6, 1996 ("RUFA").

In May 2000 the JPA Board revisited the ongoing role of the JPA and adopted a formal policy statement, which is discussed further in Section 3, below.

b. Structure and Powers of the JPA -- Preservation of Home Rule

The JPA was formed by its member agencies, which are the County of El Dorado, the County of Sacramento, the City of Folsom, and the Sacramento Regional Transit District. Each of the four member agencies contribute equally to the annual operational costs of the JPA. Since 2001, the average annual contribution by each JPA member agency is approximately \$21,000 (See Attachment 1).

The JPA is governed by a five-member Board of Directors. Each member agency appoints one member to the Board and the Board members appoint a member at large (currently a member of the Rancho Cordova City Council). The Board of Directors meets once every calendar quarter.

The RUFA governs the JPA's powers and responsibilities with respect to the Rail Corridor and is structured to preserve home rule by each member agency over its allocated portion. While the JPA is the legal owner of the Rail Corridor, each member agency holds an easement covering its allocated portion of the Rail Corridor that gives the member agency very broad discretion concerning its usage. (RUFA, Section 4.)

The JPA has no power to use or transfer any portion of the Rail Corridor without the prior request or consent of the member agency to which that portion has been allocated. (RUFA, Section 7(a).)

Conversely, any member agency may direct the JPA to permit a third-party to use its allocated portion, or to transfer part of its allocated portion, provided that the use or transfer will not:

- i. cause any reversionary rights in the Rail Corridor to vest,
- ii. otherwise threaten the continuity of any portion of the Rail Corridor,
- iii. violate the terms of any Notice of Interim Trails Use issued by the Surface Transportation Board, or
- iv. conflict with the terms of any agreement affecting the subject portion of the Rail Corridor. (RUFA Section 7(a).)

Except for the foregoing restrictions on uses or transfers and the reciprocal usage rights held by other JPA member agencies, each member agency has control over the use and disposition of its allocated portion of the Rail Corridor. This is true whether the JPA continues to exist or is dissolved, as discussed further in Section 4, below.

3. JPA Role and Value to Member Agencies and Public

- a. On May 1, 2000 the JPA Board adopted a policy for the SPTC-JPA's continued role. The adopted role includes:
  - i. Administration, including engineering and legal counsel
  - ii. Corridor maintenance/weed abatement
  - iii. Access and use permitting
  - iv. Property management
  - v. Facilitating development of transportation uses in the corridor
  - vi. Preserving continuity of the corridor (administering the RUFA).
- b. The JPA facilitates any regional use of the right-of-way by providing a single primary point of contact for the public, consistency in usage requirements and preparation/management of contracts for such uses. In the past, this has primarily been limited to excursion rail use but can be true of any future uses, such as fiber optics, electrical, gas, or other utilities that are required for development and need longitudinal easements to operate.
- c. The JPA facilitates regional uses of the right-of-way by providing a forum for staff to meet and weigh-in on potential projects. This has been true a number of times in the past. One case involved development in the City of Folsom, which included a request for a large number of crossings along E. Bidwell St. The Sacramento Regional Transit District was concerned at that time because of the potential impact of so many crossings on rail usage. JPA Staff and Board members discussed the development proposal and recommended that the number of crossings be limited. While the JPA had no authority to prohibit the crossings, the City of Folsom ultimately did reduce the number of crossings approved for development.
- d. The JPA facilitates the preservation of expertise and knowledge of the history of the public ownership of the right-of-way, which might otherwise be lost if the JPA is dissolved.
- e. The JPA manages contracts for regional maintenance and operation of the Rail Corridor, including weed abatement in the Folsom, Sacramento County and El Dorado County segments and excursion rail operations in the Folsom and Sacramento County segments.

- f. The JPA could be used to facilitate the connection of El Dorado County's trail system with the American River Bike Trail system, through Sacramento County's and Folsom's allocated portions of the corridor. This could be accomplished by bringing the trail-interest groups together to produce a feasibility study to identify the steps necessary to environmentally clear, fund, design and construct a continuous trail through the three jurisdictions.

#### 4. Dissolution of the JPA: Procedure and Ramifications

##### a. Procedure for Dissolution

The JPA may be dissolved by agreement among at least three of its member agencies. In that event, the dissolution will take effect 90 days after the third member agency gives its approval. (JPA Agreement Section 12.) In addition, any member agency may withdraw from the JPA upon giving 90 days' prior written notice. (JPA Agreement, Section 12.) However, if the JPA itself has not been dissolved, legal title to the entire Rail Corridor would remain with the JPA and would not be transferred to the withdrawing member agency. (RUFA, Sections 7(c) & 10.)

Within 90 days after the third member agency approves dissolution, the JPA must wind up its affairs. This would include filing notice with the Secretary of State, terminating most contracts, paying debts, assigning any continuing contracts to the applicable member agencies and distributing assets to the member agencies.

The primary asset to be distributed by the JPA to its member agencies is the Rail Corridor. Since the Rail Corridor is subject to a Notice of Interim Trails Use (NITU) issued to the JPA by the Surface Transportation Board (STB), the JPA and its member agencies will need to comply with federal regulations regarding transfer of railbanking responsibilities. Prior to any transfer of the Rail Corridor, the JPA and its member agencies will need to file jointly:

- (i) A copy of the existing NITU,
- (ii) A statement by each member agency that it is willing to assume financial responsibility for its portion of the Rail Corridor under the Rails to Trails Act, and
- (iii) An acknowledgment by each member agency that interim trail use is subject to possible future reconstruction and reactivation of the Rail Corridor for rail service. (49 CFR 1152.29(f).)

Following the STB's issuance of NITUs for each member agency, the JPA will quitclaim to each member agency its respective allocated portion of

the Rail Corridor using the form of quitclaim deed attached to the RUFA as Exhibit D. (RUFA, Section 7(c).)

The quitclaim deed conveying title to the member agencies will include restrictive covenants on usage and transfers identical to RUFA Section 7 and will incorporate the reciprocal easement rights of the member agencies as set forth in the RUFA. (RUFA Exhibit D, Sections 1 and 2.) In addition, the quitclaim deed will require the grantee member agency to indemnify the other member agencies against any loss resulting from an act or omission of the grantee member agency that results in the assertion of reversionary rights anywhere along the Rail Corridor. (RUFA Exhibit D, Section 4.)

Finally, since the Rail Corridor is subject to the rail banking conditions imposed by the Surface Transportation Board in the Notice of Interim Trails Use, dated July 27, 1995, the JPA may need to provide the STB with notice of the transfer of title to its member agencies.

b. Ramifications of Dissolution

The immediate ramifications of dissolving the JPA are likely to be fairly minor. However, there may be adverse ramifications in the long term with respect to preserving the continuity of the Rail Corridor and the member agencies' reciprocal rights.

Dissolution of the JPA will not result in any greater control by the member agencies over their respective allocated portions of the Rail Corridor. Although the member agencies would receive legal title to their respective allocated portions, the current restrictions imposed by the RUFA as well as the Rails to Trails Act, will survive the dissolution and be included in the quitclaim deed. The only difference is that enforcement of these restrictions would fall on the other member agencies, which will have the right to obtain equitable relief, including specific performance, or preliminary/permanent injunctive relief. (RUFA Exhibit D, Section 5.)

Dissolution of the JPA may, in the long term, result in a loss of institutional memory and expertise concerning the unique concerns of a rail banked right-of-way, as well as the loss of a convenient forum for member agency staff members to discuss projects and potential concerns. Over the years, JPA staff members have changed, but the continuity of the JPA has facilitated the ability of staff to pass knowledge along to successor staff. In addition, regular meetings of the JPA staff have given the member agencies the ability to comment informally on projects in the Rail Corridor, thus preventing potential problems. These things would be lost if the JPA is dissolved.

Finally, dissolution of the JPA would result in the loss of the services provided by the JPA, such as weed abatement and providing a single point of contact for right-of-way uses that span multiple jurisdictions.

**BOARD ACTION:**

Board to provide direction for JPA staff regarding a future role for the JPA, or dissolution thereof.

**ATTACHMENT 1**  
**SPTC-JPA MEMBER CONTRIBUTION HISTORY**

<b>Budget</b>	<b>Fiscal Year</b>	<b>Member Contribution</b>
\$120,000	2012/13	\$27,500
\$125,000	2011/12	\$28,750
\$139,000	2010/11	\$25,000
\$144,000	2009/10	\$25,000
\$144,000	2008/09	\$25,000
\$209,000*	2007/08	\$20,000
\$229,500*	2006/07	\$15,000
\$154,500	2005/06	\$10,000
\$163,000	2004/05	\$15,000
\$156,500	2003/04	\$15,000
\$103,500	2002/03	\$20,000
\$103,500	2001/02	\$25,000
\$120,000	2000/01	\$22,500

**NOTES**

1. \*Includes \$90,000 unfunded budget for storm damage repair in El Dorado County.

2. Average member contribution since 2001 = **\$21,032**.

3. In FY2000/2001, the JPA Board and the four member agencies approved a Continuing Funding Agreement (CFA). The CFA allows each member agency to pay its annual contribution without having to seek Board approval each year. The CFA was approved with a not-to-exceed limit of \$30,000, with a 2% annual escalator. (Since 2001, the escalator has theoretically increased the not-to-exceed limit from \$30,000 to approximately \$38,000, though the JPA has never requested such levels of contribution).