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Subject: PEPR/13c

This afternoon, I received a call from Peter Krause of the Governor's Office. Peter knew we hadn't yet decided whether to sue DOL, and he wanted to re-assure me that FTA Administrator Peter Rogoff was fully on board with a litigation strategy to resolve the PEPR/13c issue and obtain a speedy judicial determination. Mr. Rogoff assured the Governor's office that FTA would not retaliate or take any adverse action with regard to discretionary federal funding decisions, against any California transit agency that challenges DOL's 13c determination in court. Both FTA and DOL understand that the Governor considers litigation a pre-requisite for a legislative exemption. Peter Krause repeated his understanding, based on conversations with DOL Deputy Solicitor Debra Greenfield that federal DOJ attorneys are willing to expedite judicial proceedings to obtain a court ruling ASAP. Mr. Krause also said that if MTA does not sue DOL, the Governor will wait for another transit agency to initiate litigation, resulting in further delay.

Finally, Peter Krause does not believe a temporary legislative exemption is an attractive option, because it will not help agencies such as MTA who rely on federal capital funds more than operating funds. Apparently, DOL has indicated it will certify only operating grants, not capital grants during a period of temporary exemption. When I asked if DOL could issue its determination before August 16, he acknowledged that might be possible if we wanted a ruling sooner.

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