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6 Attorney for Petitioner and Plaintiff
7 Transportation Solutions Defense and Education Fund

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF FRESNO**

10 TRANSPORTATION SOLUTIONS DEFENSE
11 AND EDUCATION FUND, a California
12 nonprofit corporation,

13 Petitioner and Plaintiff

14 vs.

15 CALIFORNIA AIR RESOURCES BOARD, an
16 agency of the State of California, and DOES 1-
17 10, inclusive,

18 Respondents and Defendants

19 JOHN CHIANG, in his official capacity as
20 the Controller of the State of California; the
21 CALIFORNIA HIGH-SPEED RAIL
22 AUTHORITY, an agency of the State of
23 California, and DOES 11-20 inclusive,
24 Real Parties In Interest

No.

Action under the California Environmental
Quality Act

VERIFIED PETITION FOR PEREMPTORY
WRIT OF WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY RELIEF

[C.C.P. §§1060, 1085, 1094.5, Public Resources
Code §21167]

25 Petitioner and Plaintiff TRANSPORTATION SOLUTIONS DEFENSE AND
26 EDUCATION FUND. (hereinafter, "PETITIONER") hereby alleges as follows:

27 1. This action challenges the actions of Respondent and Defendant CALIFORNIA AIR
28 RESOURCES BOARD (hereinafter, "ARB") in approving the First Update to the Climate
29 Change Scoping Plan (hereinafter, "PROJECT") and certifying the program-level Environmental
Analysis ("EA") for said PROJECT.

1. PETITIONER alleges that ARB's actions violated provisions of the California
Environmental Quality Act (Public Resources Code §21000 et seq., hereinafter referred to as
"CEQA") and of the Global Warming Solutions Act of 2006 (Health & Safety Code §§38500 et
seq., hereinafter referred to as "AB 32"). More specifically, PETITIONER alleges that the EA

1 for the PROJECT was inadequate in failing to identify, acknowledge, and analyze the significant
2 GHG emissions impacts of including Real Party in Interest California High-Speed Rail
3 Authority's (hereinafter, "CHSRA") high-speed rail project (hereinafter, "HSR project") within
4 the PROJECT as will be detailed hereinafter, that ARB violated the procedural requirements of
5 CEQA, and that the PROJECT, and specifically the inclusion of the HSR project within the
6 PROJECT, violated provisions of AB 32, as will be detailed hereinafter.

7 3. PETITIONER seeks this Court's peremptory writ of mandate ordering ARB to rescind its
8 improper and illegal inclusion of the HSR project in the PROJECT and the associated sections of
9 its supporting EA and requiring it to comply with CEQA and use proper criteria in any
10 reconsideration of its approval of the HSR project's inclusion in the PROJECT. PETITIONER
11 further seeks this Court's declaration that any and all actions taken by the California Legislature
12 to fund the HSR Project with funds in the Greenhouse Gas Reduction Fund ("GGRF"), and
13 specifically any legislative appropriation for the HSR project made in reliance upon the inclusion
14 of the HSR project in the PROJECT, is invalid. PETITIONER further seeks this Court's
15 Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction against ARB,
16 and the other Respondents and Real Parties in Interest herein, restraining them, their agents,
17 servants contractors, and employees from taking any action based on ARB's approvals
18 complained of herein that would result in irreparable harm to PETITIONER, its members, the
19 public, or the environment and in particular any actions related to the HSR project funded under
20 the PROJECT that would result in the release of GHGs into the air. PETITIONER also asks that
21 it be granted its reasonable attorneys' fees under Code of Civil Procedure §1021.5 or other
22 applicable basis.

23 **PARTIES**

24 4. Petitioner and Plaintiff TRANSPORTATION SOLUTIONS DEFENSE AND
25 EDUCATION FUND is a California nonprofit corporation incorporated and existing under the
26 laws of the State of California. PETITIONER's purposes include promoting and encouraging
27 sustainable and environmentally responsible transportation policies and projects within the State
28 of California.

1 5. PETITIONER and its members have a direct and beneficial interest in the proper
2 compliance by ARB with the requirements of AB 32 and CEQA. These interests will be directly
3 and adversely affected by the approvals at issue in this action in that ARB's approvals for the
4 PROJECT violate provisions of law as set forth in this Petition and would cause significant and
5 avoidable harm to PETITIONER, its members, members of the public, and the environment.

6 6. PETITIONER brings this action on its own behalf, as well as on behalf of its member and
7 of the citizens of California, who will be harmed by ARB's improper actions in that inclusion of
8 the HSR project in the PROJECT and consequent expenditure of GGRF funds on the HSR
9 project will result in increasing, rather than decreasing, GHG emissions and worsening the
10 impacts of global warming.

11 7. PETITIONER, acting either directly or through its authorized representatives, submitted
12 written and oral comments to ARB objecting to the actions complained of herein prior to the
13 close of the public hearing on the approval of the PROJECT. PETITIONER or public agencies,
14 organizations, or members of the public raised each of the grounds for noncompliance with AB
15 32 and CEQA before Respondents, either orally or in writing, prior to the close of the public
16 hearing before ARB on the PROJECT.

17 8. This action is for the purpose of enforcing important public rights and policies of the
18 State of California. It is brought to ensure that the approvals granted by ARB are made in
19 conformance with the provisions of CEQA and of AB 32. The prosecution of this action will
20 confer a substantial benefit on members of the public by enforcing the important public policies
21 underlying CEQA and AB 32 that are intended to protect the public and the environment.

22 9. PETITIONER will not receive any financial benefit from the successful prosecution of
23 this action, although PETITIONER is assuming a significant financial burden in prosecuting the
24 action. In this action, PETITIONER is acting as a private attorney general to protect these
25 public rights and policies and prevent such harms. As such, PETITIONER is entitled to recover
26 its reasonable attorneys' fees under C.C.P. §1021.5.

27 10. Respondent and Defendant CALIFORNIA AIR RESOURCES BOARD is an agency of
28 the State of California established and operating under the laws of the State of California. ARB
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1 is the primary agency responsible for implementing the provisions of AB 32, and specifically for
2 preparing and approving Climate Change Scoping Plans for the use of revenue obtained under
3 provisions of AB 32. ARB is also the lead agency for environmental review of the PROJECT
4 under its own CEQA-equivalence document, and was responsible for certifying the EA for the
5 PROJECT.

6 11. The true names and capacities of DOES 1-10 are unknown to PETITIONER at this time;
7 however PETITIONER alleges, based on information and belief, that each party named as DOE
8 is responsible for the acts and omissions of each of the other respondents and defendants.
9 Therefore PETITIONER sues such Parties by such fictitious names, and will ask leave of the
10 Court to amend this Petition by inserting the true names and capacities of said Does when
11 ascertained.

12 12. Real Party in Interest JOHN CHIANG (hereinafter "CONTROLLER") is the Controller
13 of the State of California. As such, he is responsible for approving the disbursal of monies by
14 the State of California, and specifically for disbursing money contained in legislative
15 appropriations. CONTROLLER would be responsible for disbursing legislative appropriations
16 made pursuant to the PROJECT, and specifically appropriations to Real Party in Interest
17 CALIFORNIA HIGH-SPEED RAIL AUTHORITY.

18 13. Real Party in Interest CALIFORNIA HIGH-SPEED RAIL AUTHORITY ("CHSRA") is
19 an agency in the executive branch the State of California under the State Transportation Agency.
20 It is responsible, under the laws of California, for planning and implementing a high-speed rail
21 system within and for the benefit of the State of California. CHSRA would be responsible for
22 actually expending funds for the HSR project under the PROJECT.

23 14. The true names and capacities of Real Parties in Interest DOES 11-20 are unknown to
24 PETITIONER at this time; however PETITIONER alleges, based on information and belief, that
25 each such party named as DOE has some interest in the subject matter of this action. Therefore
26 PETITIONER sues such Parties by such fictitious names, and will ask leave of the Court to
27 amend this Petition by inserting the true names and capacities of said Does when ascertained.
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STATEMENT OF FACTS

I. AB 32 AND GREENHOUSE GAS REDUCTION STANDARDS

15. In 2006, the Legislature approved and the Governor signed AB 32. That bill specifically committed California to a strategy to reduce greenhouse gas (“GHG”) emissions – i.e., gases that increase the earth’s retention of solar radiation and are thought to be responsible for global warming. It set two specific goals: to reduce California’s levels of GHG production to 1990 levels by 2020 and to reduce California’s GHG production levels to no more than 20% of the 1990 levels by 2050. The aim of these reductions is to place California on a path that, if followed by the remainder of the world, would stabilize GHG levels worldwide and reduce the likelihood of catastrophic climate change impacts.

16. AB 32 requires ARB to take a number of actions towards its implementation. One of those actions is to prepare and approve a series of Climate Change Scoping Plans (“Scoping Plans”). The Scoping Plans are intended to achieve the maximum technologically feasible and cost-effective GHG emissions reductions by 2020. AB 32 requires that the Scoping Plan be updated at least every five years.

17. ARB prepared and adopted an initial Scoping Plan in 2008.

18. ARB prepared and certified a Functional Equivalent Document (“FED”), which serves as the equivalent of an Environmental Impact Report under CEQA, for its initial 2008 Scoping Plan. The 2008 Scoping Plan and 2008 FED were given final approval by ARB in May 2009.

19. The 2008 FED was successfully challenged in court for noncompliance with CEQA. Consequently, ARB was ordered to revise the 2008 FED to address deficiencies in its alternatives analysis. Consequently, in 2011 ARB prepared and, in August 2011 certified, a 2011 Supplement to the 2008 FED. ARB subsequently reapproved the 2008 Scoping Plan.

II. THE 2014 UPDATED SCOPING PLAN

20. ARB prepared a Draft First Update to the Scoping Plan, which it released to the public in February 2014. ARB also prepared and, on or about March 14, 2014, released to the public a Draft EA for the Updated Scoping Plan. The Draft EA was circulated for forty-five days for public review and comment.

1 21. PETITIONER submitted a written comment letter on the Draft Updated Scoping Plan.
2 The letter specifically pointed out that the GHG Report submitted to ARB by CHSRA, and
3 specifically referenced in the Draft Updated Scoping Plan at footnote 72 on page 63, grossly
4 misrepresented the GHG emissions impacts of its proposed high-speed rail project. The CHSRA
5 Report did so by not only understating the construction-related emissions compared to the
6 asserted operational GHG emissions reductions, but perhaps even more importantly and
7 egregiously, by omitting entirely the GHG emissions impacts associated with manufacturing the
8 many thousands of tons of cement that would be needed for the project's construction. ARB
9 made no changes to the Updated Scoping Plan or its EA in response to PETITIONER's letter.

10 22. On or about May 15, 2014, ARB released its Updated Scoping Plan in final form. On or
11 about that same date, ARB also released its Final EA for that Updated Scoping Plan, including
12 its Responses to Comments on the Draft EA for the Updated Scoping Plan. Neither the final
13 version of the Updated Scoping Plan nor the Final EA for the Updated Scoping Plan nor the
14 Responses to Comments on the EA for the Updated Scoping Plan provided any response to
15 PETITIONER's comments on the Scoping Plan and its environmental impacts, and specifically
16 on its critique of including funding for the CHSRA's high-speed rail project. The Final Updated
17 Scoping Plan continued to recommend allocating funding from the GGRF to the CHSRA for its
18 high-speed rail project.

19 23. On or about May 22, 2014, ARB held a public hearing on the First Update to the Climate
20 Change Scoping Plan and its Final EA. At the hearing, PETITIONER, through its president,
21 submitted oral comments repeating its criticisms of the Updated Scoping Plan and its Final EA.
22 In particular, PETITIONER called attention to the fact that the Final EA failed to disclose or
23 discuss the significant adverse GHG emissions impacts of providing funding to the high-speed
24 rail project as part of the Updated Scoping Plan. Nevertheless, ARB certified the Final EA and
25 approved the Updated Scoping Plan.

26 24. On or about May 23, 2014, ARB filed a Notice of Determination for its approval of the
27 Updated Scoping Plan and certification of the associated Final EA.

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PRELIMINARY ALLEGATIONS

25. Venue in Fresno County is proper for this action under Code of Civil Procedure §401.

26. PETITIONER has exhausted any and all available administrative remedies to the extent required by law. PETITIONER has raised its concerns and objections through both oral and written testimony throughout the administrative process and prior to the close of the public hearing for the final approval of the PROJECT.

27. PETITIONER has no plain, speedy or adequate remedy in the ordinary course of law unless the Court grants the requested writ of mandate, declaratory judgment, and, if necessary, injunctive relief requiring ARB to rescind their improper and illegal approval for the PROJECT and certification of its EA. In the absence of such relief, PETITIONER, its members, the public, and the environment will suffer irreparable harm from the implementation of the PROJECT, and specifically the increased GHG emissions associated with the high-speed rail project, and from acts undertaken in furtherance thereof without ARB’s consideration of mitigation measures or alternatives that would reduce or avoid the PROJECT’s significant environmental impacts.

28. Pursuant to Public Resources Code §21167.5, on June 20, 2014, PETITIONER served notice on ARB of its intent to initiate litigation under CEQA over the PROJECT’s approval. Proof of service of that notice, along with a copy thereof, are attached hereto as Exhibit A.

29. Pursuant to Public Resources Code §21167.7 and C.C.P. §388, PETITIONER has provided notice and a copy of this petition to the California Attorney General. A copy of said notice, with proof of service, is attached hereto as Exhibit B.

**CHARGING ALLEGATIONS
FIRST CAUSE OF ACTION
INADEQUATE EA (VIOLATION OF CEQA)**

30. PETITIONER hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 29, inclusive.

31. ARB is the lead agency for the PROJECT under CEQA.

32. As lead agency, ARB had a duty to prepare an EA that analyzed the PROJECT’s potential environmental impacts, identified the PROJECT’s potentially significant impacts, and,

1 for each significant impact, identified, to the extent possible, feasible mitigation measures that
2 would reduce that impact to a level of insignificance.

3 33. ARB also had a duty under CEQA to ensure that the EA considered a reasonable range of
4 feasible alternatives that could avoid or significantly reduce one or more of the PROJECT's
5 significant impacts, and that the EA provided adequate responses to all comments received on
6 the PROJECT and its Draft EA during the comment period.

7 34. During the comment period, PETITIONER submitted written comments on the
8 PROJECT pointing out its deficiencies, and specifically noting that inclusion of CHSRA's HSR
9 project in the PROJECT would result in significant increases in GHG emissions, rather than the
10 GHG emissions reductions called for by AB 32. ARB failed to adequately address these issues,
11 either in the revised PROJECT, in its Responses to Comments document, or otherwise.

12 35. On or about May 22, 2014 ARB held its final public hearing on the PROJECT.
13 PETITIONER, through its authorized representative, provided additional oral comments on
14 defects relating to the PROJECT and its Final EA and specifically objected to the PROJECT
15 authorizing the use of GGRF funds to fund CHSRA's high-speed rail project prior to the close of
16 the public hearings on the PROJECT. The defects in the EA and in PROJECT identified in these
17 comments are set forth in greater detail below. ARB failed to respond to these comments or to
18 correct the errors identified by PETITIONER. Nevertheless, on that same day ARB closed the
19 public hearing and approved Resolution #14-16 adopting the PROJECT and certifying the Final
20 EA for the PROJECT. In doing so, ARB adopted CEQA findings purporting to address all of the
21 PROJECT's potentially significant environmental impacts. In addition, ARB approved a
22 Statement of Overriding Considerations ("SOC") purportedly justifying the PROJECT's
23 significant and unavoidable impacts based on the benefits the PROJECT would provide.
24 However, neither the findings nor the SOC identified the impacts pointed out by PETITIONER
25 that would be associated with including the HSR project in the PROJECT.

26 **COUNT NUMBER ONE – Inadequate PROJECT Description.**

27 36. ARB violated CEQA by failing to include in the EA an accurate and adequate description
28 of the high-speed rail project proposed for inclusion in the Scoping Plan. More specifically, the
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1 EA failed to include in the high-speed rail project the production of the enormous quantities of
2 cement that would be needed to construct the high-speed rail project.

3 37. In addition, the EA was inadequate in considering only construction impacts from the
4 first 1/10th of the Initial Operating Segment of the high-speed rail project while considering the
5 putative GHG reduction effects associated with construction and operation of the entire Initial
6 Operating Segment.

7 **COUNT NUMBER TWO** – Failure to identify significant impacts:

8 38. ARB violated CEQA by preparing and certifying an EA for the PROJECT that failed to
9 properly identify significant impacts of the PROJECT, and more specifically improperly
10 segmenting (“piecemealing”) impacts associated with the HSR project.

11 39. Specifically, the EA was inadequate and improperly certified under CEQA for failing to
12 identify as significant or understating the significance of the PROJECT’s GHG emissions
13 impacts. More specifically, the EA improperly relied on CHSRA’s inadequate analysis of the
14 GHG emissions impacts of including its high-speed rail project within the PROJECT, without
15 doing its own independent analysis and evaluation of those impacts and their significance, as
16 required under CEQA. In particular, the EA failed to disclose, analyze: or consider 1) the GHG
17 emissions impacts from construction of the entire Initial Operating Segment (“IOS”) of the HSR
18 project, relying instead on the CHSRA’s analysis of the HSR project, which only considered the
19 construction impacts (including GHG emissions impacts) from the first portion of that segment,
20 dubbed “CP1” and amounting to only one-tenth the length of the IOS, while considering the
21 putative GHG reduction effects of the construction and operation of the entire IOS; 2) the GHG
22 emissions impacts caused by GHG emissions associated with the manufacture of the enormous
23 quantities of cement that would be needed to construct the IOS, which cement would not have
24 been manufactured but for the construction of the IOS.

25 **COUNT NUMBER THREE** – Failure to properly consider cumulative impacts of the
26 PROJECT:

27 40. Even if the PROJECT did not directly include the cement production required to
28 construct the HSR project, that cement production, and the GHG emissions impacts associated
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1 with that cement production, was a reasonably foreseeable future project resulting from approval
2 of the PROJECT. Therefore, that cement production and its GHG emissions impacts should
3 have been discussed under the PROJECT's cumulative impacts.

4 41. Neither the PROJECT nor the EA for the PROJECT addressed the GHG emissions
5 impacts associated with the cement production required for construction of the HSR project,
6 either as a direct or a cumulative impact of the PROJECT. That failure was a violation of CEQA
7 and an abuse of ARB's discretion.

8 **COUNT NUMBER FOUR** – Failure to consider feasible mitigation measures to address
9 significant PROJECT impacts:

10 42. The EA was inadequate in failing to consider any mitigation measures to address the
11 significant GHG production impacts associated with including the high-speed rail project within
12 its PROJECT. Specific inadequacies were:

- 13 a. The EA failed to adopt or even adequately consider feasible mitigation measures that
14 could have reduced the PROJECT's significant GHG emissions impacts.

15 **COUNT NUMBER FIVE** – Failure to consider an adequate range of alternatives:

16 43. ARB violated CEQA by preparing and certifying an EA for the PROJECT that failed to
17 consider and analyze an adequate range of alternatives to the PROJECT that could have feasibly
18 avoided or reduced the PROJECT's significant GHG production impact.

19 44. In particular, the EA failed to provide an adequate analysis of the following alternatives:

- 20 a. An alternative that would involve the redesign of the HSR project: such that it was
21 shorter in length and used construction techniques requiring less use of cement (e.g.,
22 minimizing the use of raised concrete viaduct structures), all of which would have
23 significantly reduced the required amount of concrete and associated GHG impact.
24 b. Eliminating the HSR project from consideration and instead increasing the amount of
25 funding provided to other transportation projects, such as alternative fuel vehicles, that
26 would improve transportation without producing the HSR project's GHG emissions
27 impacts.

28 **COUNT NUMBER SIX** – Failure to adequately respond to comments:
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1 45. The EA was deficient and in violation of CEQA for failing to provide good-faith
2 reasoned responses, supported by substantial evidence in the record, to all comments received on
3 the PROJECT and/or its EA identifying PROJECT impacts. In particular, the EA failed to
4 provide any response to the comment letter submitted by PETITIONER.

5 46. All of the above violations of CEQA were prejudicial to PETITIONER and others in that
6 they adversely affected the rights of PETITIONER, public agencies, and other organizations and
7 members of the public to be provided with full and accurate information on the PROJECT, its
8 impacts, and feasible ways to mitigate or avoid those impacts, as well as their right to be able to
9 provide comments on those issues and have their comments responded to with reasoned fact-
10 based responses.

11 47. ARB abused its discretion and failed to proceed in the manner prescribed by law by
12 certifying the EA and approving the PROJECT when the EA failed to satisfy the requirements of
13 CEQA as set forth above.

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15 **SECOND CAUSE OF ACTION**
INADEQUATE FINDINGS

16 48. PETITIONER hereby realleges Paragraphs 1-47 inclusive and incorporates them herein
17 by this reference.

18 49. Under CEQA, a lead agency must, in approving a project for which an EIR or an EIR-
19 equivalent document has been prepared, make findings addressing each of the project's
20 potentially significant impacts and explaining how those impacts have been mitigated or
21 avoided, or, if the impacts are found to be unavoidable, explaining why mitigation or avoidance
22 is infeasible and describing the justification, through a SOC, for why the project should proceed
23 in spite of its significant and unavoidable impacts.

24 50. As part of Resolution #14-16 approving the PROJECT, the ARB adopted findings
25 purporting to identify and discuss each of the PROJECT's potentially significant impact and
26 why, even though those impacts might be unavoidable, ARB was justified in approving the
27 PROJECT in spite of those impacts. However, those finding and the SOC were defective in that
28 they failed to address the significant GHG emissions impacts from including the HSR project in
29 the PROJECT. Likewise, the SOC was defective in failing to disclose and address the

1 significant GHG emissions increases associated with the HSR project, making its balancing of
2 PROJECT impacts against PROJECT benefits defective.

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4 **THIRD CAUSE OF ACTION**
PROCEDURAL VIOLATION OF CEQA – FAILURE TO RECIRCULATE

5 51. PETITIONER hereby realleges Paragraphs 1-50 inclusive and incorporates them herein
6 by this reference.

7 52. CEQA requires that when information is disclosed about the environmental impacts of a
8 project after the CEQA document for the project has been released for public review and
9 comment, and the new information discloses a new or significantly increased impact from the
10 project, the CEQA document must be recirculated to allow comment on the new information.

11 53. The information provided by PETITIONER in its comment letter on the PROJECT
12 disclosed that the HSR project included in the PROJECT would have significantly greater GHG
13 emissions impacts than had been disclosed by the Draft EA for the PROJECT.

14 54. Contrary to its duty under CEQA, ARB failed to recirculate the EA to allow public and
15 agency comment on the newly-disclosed increase in impacts.

16 55. ARB's failure to recirculate the EA was an abuse of discretion in violation of CEQA.

17
18 **FOURTH CAUSE OF ACTION**
APPROVAL IN VIOLATION OF THE GLOBAL WARMING PREVENTION ACT
19 **(AB 32)**

20 56. PETITIONER hereby realleges Paragraphs 1-55 inclusive and incorporates them herein
21 by this reference.

22 57. The PROJECT herein was a project requiring compliance with AB 32.

23 58. ARB violated AB 32 by approving the PROJECT when the PROJECT violated
24 provisions of AB 32 by failing to ensure that the GHG emission reductions claimed to be
25 achieved by the adoption of the PROJECT were real, permanent, quantifiable, verifiable, and
26 enforceable by the ARB, as required by AB 32.

27 59. More specifically, the GHG reductions claimed through the inclusion of the HSR project
28 in the PROJECT were neither real, permanent, quantifiable or verifiable but were instead
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1 illusory because in reality the construction of the HSR project would result in a significant
2 increase in GHG emissions and that increase in emissions would not be offset by any
3 concomitant reductions in GHG emissions prior to 2030 or beyond, making the HSR project a
4 contributor to a net increase in GHG emissions, directly contrary to the intent and requirements
5 of AB 32.

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7 **FIFTH CAUSE OF ACTION**
8 **DECLARATORY RELIEF (C.C.P. §1060)**

9 60. PETITIONER hereby realleges Paragraphs 1-59 inclusive and incorporates them herein
10 by this reference.

11 61. Under Government Code §16428.8, the Legislature has created the GGRF as a special
12 fund in the California State Treasury. The GGRF holds the proceeds resulting from the auction
13 of GHG cap and trade allowances.

14 62. Under Health & Safety Code §39712, money may only be appropriated or allocated from
15 the GGRF for measures, programs, or projects that are consistent with AB 32 and further its
16 regulatory purposes.

17 63. Among the purposes of the PROJECT is to identify measures, programs, and projects that
18 are eligible to receive funding from the GGRF.

19 64. An actual controversy and dispute exists between PETITIONER, on the one hand, and
20 ARB and REAL PARTIES IN INTEREST, on the other hand, regarding the propriety and effect
21 of including the HSR project in the PROJECT.

22 65. PETITIONER asserts that the CHSRA's current HSR project is ineligible for inclusion in
23 a Scoping Plan, including the PROJECT, because its inclusion would be contrary to the intent
24 and the actual provisions of AB 32. PETITIONER is informed and believes, and on that basis
25 alleges, that ARB and REAL PARTIES IN INTEREST, on the other hand, believe that the HSR
26 project can properly be included in a Scoping Plan and was properly included in the PROJECT.

27 66. PETITIONER additionally asserts that only projects properly included in the PROJECT
28 may be funded through a legislative appropriation from the GGRF. PETITIONER further
29 asserts that any appropriation from the GGRF for the HSR project in reliance on the PROJECT

1 and its EA would be improper and unlawful under both CEQA and AB 32, while PETITIONER
2 is informed and believes, and on that basis alleges, that ARB and REAL PARTIES IN
3 INTEREST assert that such an appropriation would be legal and proper.

4 67. PETITIONER therefore seeks a judicial declaration as to the legality of the Legislature
5 making an appropriation from the GGRF for a measure, program, or project not included in a
6 properly-approved Climate Change Scoping Plan, and specifically the HSR project, and a
7 declaration that any such appropriation would be improper, illegal, and invalid *ab initio*, as well
8 as a judicial declaration of the respective rights, responsibilities, and duties of the parties with
9 respect to such an appropriation.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PETITIONER prays for relief as follows:

- 12 1. For this Court's peremptory writ of mandate directing ARB to set aside and vacate its
13 approval of the PROJECT and the certification for its EA insofar as the PROJECT and its EA
14 include the HSR project as a component of the PROJECT and an appropriate use of funds from
15 the GGRF;
- 16 2. For this Court's peremptory writ of mandate directing ARB, in taking any further actions
17 to consider including the HSR project in said PROJECT, to use proper legal criteria under both
18 CEQA and AB 32 and substantial evidence in the record before them in making any
19 determination of whether to grant approval to a PROJECT including the HSR project;
- 20 3. For this Court's declaration that it would be improper, illegal, and a violation of law for
21 the Legislature to appropriate funds from the GGRF for a measure, program, or project that was
22 not included within a properly approved PROJECT, and that any legislative appropriation from
23 the GGRF for a measure, program, or project not included within a properly approved PROJECT
24 is or would be invalid and void *ab initio*.
- 25 4. For this Court's temporary restraining order, preliminary and permanent injunctions
26 restraining ARB and REAL PARTIES, their agents, employees, servants, officers, contractors,
27 assigns or any of those acting in concert with them from transferring, disbursing, or undertaking
28 any expenditure of funds from the GGRF towards the construction of the HSR project, or taking
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1 any other action in support of said HSR project in reliance upon ARB's approvals at issue
2 herein, pending this Court's final determination and the entry of a final judgment in this case.

3 5. For an award of reasonable attorney's fees under Code of Civil Procedure section 1021.5
4 or as otherwise authorized by law;

5 6. For costs of suit incurred herein; and

6 7. For such other and further equitable or legal relief as the Court deems just and proper.

7 Dated: June 20, 2014

Stuart M. Flashman

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9 Stuart M. Flashman
10 Attorney for Transportation Solutions
11 Defense and Education Fund
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VERIFICATION

I, David Schonbrunn, am the President of the Transportation Solutions Defense and Education Fund, which is the petitioner in this action and has authorized me to sign this verification on its behalf. I have read the foregoing Petition and am familiar with the matters alleged therein. All of the facts stated therein are true of my own knowledge, except as to matters alleged based on information and belief, and as to such matter I am informed and believe that the matters stated therein are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on June 20, 2014 at Oakland, California.


David Schonbrunn

Exhibit A

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com

June 20, 2014

Mary D. Nichols, Board Chairman
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

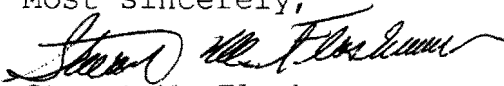
RE: Notice of Intent to Initiate Legal Action.

Dear Ms. Nichols:

Please take notice that the Transportation Solutions Defense and Education Fund ("TRANSDEF") intends to initiate legal action against the California Air Resources Board under the California Environmental Quality Act and the California Global Warming Solutions Act of 2006 for its approval of the First Update to the Climate Change Scoping Plan and its approval of the Final Environmental Analysis for said project.

This notice is being sent pursuant to Public Resources Code §21167.5. Please contact me immediately if you need clarification or wish to discuss this notice further.

Most sincerely,


Stuart M. Flashman

PROOF OF SERVICE BY MAIL

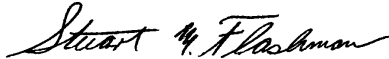
I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the action involved herein. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On June 20, 2014, I served the within NOTICE OF INTENT TO INITIATE LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Mary D. Nichols, Board Chairman
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on June 20, 2014.



Stuart M. Flashman

Exhibit B

1 Stuart M. Flashman (SBN 148396)
5626 Ocean View Dr.
2 Oakland, CA 94618-1533
Telephone/Fax: (510) 652-5373
3 e-mail: stu@stuflash.com

4 Attorney for Petitioner and Plaintiff
Transportation Solutions Defense and Education Fund
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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF FRESNO**

10 TRANSPORTATION SOLUTIONS DEFENSE
AND EDUCATION FUND, a California
nonprofit corporation,

11 Petitioner and Plaintiff

12 vs.

13 CALIFORNIA AIR RESOURCES BOARD, an
agency of the State of California, and DOES 1-
14 10, inclusive,

15 Respondents and Defendants

16 JOHN CHIANG, in his official capacity as
the Controller of the State of California; the
CALIFORNIA HIGH-SPEED RAIL
17 AUTHORITY, an agency of the State of
California, and DOES 11-20 inclusive,
18 Real Parties In Interest

No.

Action under the California Environmental
Quality Act

NOTICE OF FILING OF LEGAL ACTION

[C.C.P. §388, Public Resources Code §21167.7]

19 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

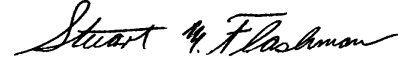
20 PLEASE TAKE NOTICE under Code of Civil Procedure section 388 that, on June 23,
21 2014, Petitioner and Plaintiff TRANSPORTATION SOLUTIONS DEFENSE AND
22 EDUCATION FUND filed a petition for peremptory writ of mandate and complaint for
23 declaratory relief against Respondents and Defendant CALIFORNIA AIR RESOURCES
24 BOARD (“ARB”) in Fresno County Superior Court. The petition alleges that ARB violated the
25 provisions of the California Environmental Quality Act (CEQA) and provisions of the California
26 Global Warming Solutions Act (AB 32) in approving the First Update to the Climate Change
27 Action Plan. A copy of the petition and complaint is attached hereto for your reference.
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1 Please provide a letter acknowledging receipt of this notice.

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3 DATE: June 23, 2014

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Stuart M. Flashman
Attorney for Petitioner and Plaintiff
Transportation Solutions Defense
and Education Fund

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PROOF OF SERVICE BY MAIL

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On June 23, 2014, I served the within NOTICE OF FILING OF LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Office of the California Attorney General
2550 Mariposa Mall, Room 5090
Fresno, CA 93721-2271

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on June 23, 2014.



Stuart M. Flashman