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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE

COUNTY OF KERN,

Petitioner and Plaintiff,

v.

CALIFORNIA HIGH-SPEED RAIL
AUTHORITY, and DOES 1 through 20

Respondents and Defendants.

and ROES I to X;

Real Parties in Interest.

) CASE NO.:

)
) PETITION FOR WRIT OF MANDATE AND
) COMPLAINT FOR DECLARATORY AND
) INJUNCTIVE RELIEF

) [Code of Civil Proc., §§ 526, 1060, 1085, 1094.5;
) Civ. Code § 1060; California Environmental
) Quality Act ("CEQA"), Public Resources Code, §§
) 21000 et seq.; Safe, Reliable High-Speed Passenger
) Train Bond Act for the 21st Century, Streets and
) Highways Code, §§ 2704 et seq.; Anti-
) Discrimination Law, Government Code, § 11135;
) and Williamson Act, Government Code, §§ 51200
) et seq.]

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FILED
Superior Court Of California,
Sacramento

06/06/2014

awoodward

By _____, Deputy

Case Number:

34-2014-80001853

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

1 Petitioner and Plaintiff COUNTY OF KERN ("Petitioner" or the "County") alleges as follows:

2 **INTRODUCTION AND SUMMARY**

3 1. By this proceeding and through this Petition for Writ of Mandate ("Petition"), Petitioner
4 seeks to establish that Respondent CALIFORNIA HIGH-SPEED RAIL AUTHORITY (the "Authority"
5 or "Respondent") violated the California Environmental Quality Act ("CEQA") (Pub. Resources Code,
6 §§ 21000 *et seq.*), the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century
7 ("Proposition 1A") (Streets and Highways Code section 2704 *et seq.*), anti-discrimination law (Gov.
8 Code, § 11135), and the California Land Conservation Act of 1965 ("Williamson Act") (Gov. Code, §§
9 51200 *et seq.*) and in other ways abused its discretion and violated the law in certifying an
10 Environmental Impact Report/Environmental Impact Statement ("EIR") and approving the
11 approximately 114-mile Fresno-to-Bakersfield section ("Section") (collectively, the "Section
12 Approvals") of the proposed 800-mile public transit project known as the High-Speed Train system
13 ("Train System").

14 2. The Section would consist of a broad swath of new train infrastructure through the heart
15 of the Central Valley. The Section would ultimately cause extensive significant adverse impacts to,
16 among other things, Central Valley agriculture, air quality, land use, aesthetics and visual resources,
17 cultural resources, biological resources and wetlands, public health and safety, traffic and transportation
18 facilities, water supply and quality, and parks and recreation resources, a hospital, churches, and
19 hundreds of homes. Notably, a significant portion of the approved Section would deviate from existing
20 transportation corridors such as Interstate 5, State Route 99, and the existing Union Pacific Railroad
21 Company ("UPRR") and Burlington Northern Santa Fe Railway Company ("BNSF") railroad rights-of-
22 way. The Section's deviation from existing transportation corridors would result in the destruction of or
23 substantial interference with thousands of acres of farmland (many of which are "prime," "important," or
24 restricted by Williamson Act contracts) and wildlife habitat, established communities, many businesses,
25 commercial properties and industrial facilities, existing roads, oil and water wells, and water delivery
26 and drainage facilities.

27 3. The Authority failed to analyze alternatives that would altogether avoid or substantially
28 reduce the identified impacts. It also failed to recirculate the EIR for the Section, even though

1 significant new information about geotechnical impacts, Valley Fever, and interference with existing
2 railroad lines, among other things, was not disclosed until after the Revised Draft EIR was released in
3 2012. In addition, the Authority revised the Section design to include additional elevated sections and
4 other substantial changes to the alignment without recirculating the EIR.

5 4. Through the EIR for the Section, the Authority acknowledged some of the Section's
6 significant impacts, but, due to numerous analytical deficiencies, failed to disclose and analyze the full
7 scope and severity of these impacts to decisionmakers or to the public. The Authority also improperly
8 deferred the formulation of necessary mitigation measures and failed to incorporate a number of
9 suggested feasible alternatives and mitigation measures to avoid the Section's adverse impacts on the
10 Central Valley, as required by CEQA. The Authority's failure to analyze alternatives and adequately
11 mitigate impacts also resulted in its violating the Williamson Act and anti-discrimination law since
12 feasible alternatives along existing transportation corridors would have avoided or reduced impacts to
13 prime agricultural lands and disproportionate impacts to minority and low income populations.
14 Therefore, the Authority's decision approving the Section must be set aside as contrary to law.

15 5. Petitioner requests a peremptory writ of mandate ordering the Authority to (a) set aside
16 and void its certification of the EIR and all of its Section Approvals, (b) comply with the requirements
17 of CEQA and all other applicable legal requirements prior to taking further actions with respect to this
18 Section of the Train System and the Initial Construction Section ("ICS") and (c) not take any further
19 actions with respect to the Section and the ICS until it has complied with those legal requirements.

20 6. Petitioner also seeks (a) a determination and declaration that the Authority violated
21 CEQA, Proposition 1A, anti-discrimination law, the Williamson Act and other applicable legal
22 requirements in connection with the Section Approvals, that the Section Approvals were given in
23 violation of those laws, and that the Section Approvals are void and (b) an order enjoining Respondents
24 and Real Parties in Interest from taking any further actions with respect to the Section Approvals and
25 from undertaking any physical activity on the Section in furtherance of the Section Approvals unless
26 and until Respondents comply with CEQA and all other applicable laws and legally appropriate
27 entitlement governmental approvals for the Section have been granted.

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8. Venue is proper in this Court pursuant to Public Utilities Code section 185038.

9. The County of Kern is a political subdivision of the State of California representing a population of approximately 864,000 people. Since it must issue discretionary permits for Section activities, the County is a “responsible agency” as defined by CEQA. The Board of Supervisors for Kern County is responsible for regulating land use in all unincorporated areas within Kern County’s borders, and is charged with protecting the public health and safety and promoting the general welfare and quality of life of Kern County’s citizens. Kern County brings this action on its own behalf, on behalf of the residents and businesses within Kern County, and on behalf of the general public who will be adversely affected by the Section Approvals and the Train System. The actions complained of herein threaten the interests of the public in Respondents’ compliance with and implementation of all laws and regulations applicable to the Section and Train System and threaten Kern County’s interests and the interests of those whom Kern County serves and impairs Kern County’s ability to carry out its governmental functions. These interests and functions have been and will continue to be adversely affected by the Authority’s failure to comply with the applicable legal requirements prior to adopting the Section Approvals.

10. Respondent California High-Speed Rail Authority is, and at all times relevant to this proceeding was, an independent state authority established by the legislature in 1996. The Authority is responsible for planning, constructing and operating a high-speed train system to serve the Los Angeles to San Francisco mainline route as well as other major California cities. The Authority is governed by a nine-member board of directors (“Board”). The Authority is the lead agency under CEQA for the Section and the Train System as a whole. The Authority, its staff, and contractors and consultants working under its control and direction prepared the environmental impact report for the Section. The Authority’s Board certified the Final EIR and approved the Section.

11. Respondents DOES 1 through 20, inclusive, are sued under fictitious names. Petitioner

1 is ignorant of the true names and capacities, whether individual, corporate, governmental, or otherwise,
2 of the Respondents named in this Petition as DOES 1 through 20, inclusive, and therefore sue these
3 Respondents by these fictitious names. Petitioner will amend this Petition to allege their true names
4 and capacities when ascertained. Petitioner is informed and believes, and based thereon alleges, that
5 each of these fictitiously named Respondents are responsible in some manner for the acts or omissions
6 alleged herein.

7 12. Real parties in interest named as ROES I to X, inclusive, are given fictitious names
8 because their names and capacities are presently unknown to Petitioner. Petitioner will amend this
9 Petition to allege their true names and capacities when ascertained. Petitioner is informed and believes,
10 and based thereon alleges, that each of these fictitiously named Real parties in interest derive some
11 benefit or entitlement from the Section Approvals.

12 STATEMENT OF FACTS

13 13. For the Fresno-to-Bakersfield Section of the Train System, the Authority and Federal
14 Railroad Administration conducted simultaneous CEQA and NEPA review. The Federal Railroad
15 Administration ("FRA") review is ongoing – its Record of Decision has not yet been issued.

16 14. The EIR for the Section is a project-level EIR that explicitly tiers off of several program
17 EIRs. Two of these program EIRs have been decertified in their entirety as a result of judicial
18 determinations that Respondent failed to comply with the requirements of CEQA.

19 15. The Authority released a Draft EIR/EIS ("Draft EIR") for the Section on August 12,
20 2011. The 60-day public comment period ended October 13, 2011.

21 16. In response to comments received from federal agencies and others on the Section
22 alternatives, the Authority revised the Draft EIR to include additional route and station variations on the
23 original alignment. Specifically, the Authority added new alignment variations and station locations
24 west of Hanford, an additional variation through Bakersfield, and other alterations to the existing
25 Fresno-to-Bakersfield alignment alternatives. However, the Authority did not add alternative corridors
26 outside the original proposed corridor alignment such as along Highway 99, nor did the Authority
27 analyze alternative designs of the proposed alignment such as tunneling or trenching in urban areas.

28 17. The Revised Draft EIR/EIS (hereinafter, the "Revised Draft EIR") was released in July

1 2012. The public comment period began on July 20, 2012 and was extended to October 19, 2012.

2 18. Petitioner, other agencies, and members of the public submitted comments during the
3 comment periods for the Draft EIR and Revised Draft EIR.

4 19. The Final EIR/EIS ("Final EIR") was released by the Authority on April 18, 2014. The
5 Final EIR contained many pages of new information in a substantially revised environmental impact
6 analysis and in the Responses to Comments. This new information included new potentially significant
7 impacts on additional agricultural lands, oil and gas fields and individual wells, environmental justice
8 communities, and parks and recreation facilities, among other newly disclosed impacts.

9 20. After release of the Final EIR, the Authority informed two public agencies, several
10 businesses, and numerous individuals that their comments and the Authority's responses to those
11 comments had been "inadvertently omitted" from the Final EIR. The Authority published an "Errata"
12 to the FEIR prior to the public hearing, which Errata added the omitted comments and responses to the
13 FEIR and included other substantive changes to the document.

14 21. Released just days before the May 6-7 Board meeting, the proposed CEQA Findings and
15 Statement of Overriding Considerations for the Section would override significant and unavoidable
16 impacts in the categories of noise and vibration, socioeconomic, communities, and environmental
17 justice, agricultural lands, aesthetics and visual resources, cultural resources, and cumulative impacts.
18 When adopted, the Statement of Overriding Considerations would override these allegedly unmitigable
19 adverse impacts based on the Section's purported greenhouse gas reduction benefits, and benefits
20 related to the Train System's potential use for conventional passenger rail, as a high-speed test track,
21 among others.

22 22. The public hearing on the Section's approval was scheduled for the May 6-7, 2014
23 meeting of the Authority Board.

24 23. On May 5, the Authority applied to the San Joaquin Valley Air Pollution Control District
25 for an Indirect Source Review permit, the first step to preparing a Voluntary Emissions Reduction
26 Agreement to mitigate adverse air pollution impacts during construction and operation. The application
27 disclosed for the first time that 70 miles of the 114-mile Section (the portions of the Section within
28 Construction Package ("CP") 1c, CP2, and CP3) would require 24 million cubic yards of imported fill

1 dirt. This contrasted sharply with EIR's disclosure that only 11.3 million cubic yards of fill dirt would
2 be needed for the entire Section. The application thus demonstrates that the EIR substantially
3 underestimated the amount of fill dirt required for the Section and the associated impacts caused by
4 excavating, transporting, screening, spreading, and compacting the additional amount of fill dirt.

5 24. At the May 6 hearing, numerous aggrieved individuals, businesses, local government
6 agencies, and groups spoke in opposition to the Section's approval. Individuals, public agency
7 representatives, businesses and agricultural interests voiced concerns related to, among other things, the
8 short time period for reviewing the extensive new information presented in the Final EIR, the changes
9 to the Section's alignment through the Hanford area, destruction of productive agricultural lands, the
10 failure to analyze the impacts of constructing the ICS, the failure to analyze the Section's cumulative
11 impacts, and the Authority's failure to mitigate other adverse impacts of the Section.

12 25. On May 7, 2014, the Board voted to certify the EIR and approve a portion of the
13 Section, from Mariposa Street in Fresno to 7th Standard Road, northwest of Bakersfield. The Board
14 took this action in spite of the concerns raised by individuals, public agency representatives, businesses
15 and agricultural interests at the May 6 hearing.

16 26. At the same hearing on May 7, the Board approved a Memorandum of Understanding
17 with the San Joaquin Valley Air Pollution Control District. However, a Voluntary Emissions
18 Reduction Agreement has not yet been disclosed to the public or approved.

19 27. The Authority posted a Notice of Determination pursuant to CEQA on May 8, 2014.

20 28. On May 16, 2014, the Authority provided a notice of public acquisition of Williamson
21 Act lands (lands subject to preservation contracts under the Williamson Act) for the Fresno-to-
22 Bakersfield Section of the Train System to the California Department of Conservation. The notice
23 included maps of agricultural lands to be taken or impacted by the Section. Although the maps were
24 apparently produced in March 2014, they were not included in the EIR or elsewhere in the review
25 process for the Section before the May 7, 2014 approval. During the administrative process for the
26 Section, commenters had requested that such maps be made available so that the public could determine
27 which severed remainder parcels were determined to be "uneconomic", i.e., not viable for continued
28 agricultural production. The maps revealed a number of very small, oddly shaped, and/or isolated

1 agricultural remainder parcels that will likely be uneconomic but were not counted as directly impacted
2 by the Section. The Authority acknowledged in this letter that, because of changes to the Section's
3 preferred alignment and roadway overpass expansions, twenty-seven (27) new Williamson Act
4 contracts for preservation of parcels of agricultural land would be impacted. These impacts had not
5 been previously identified. The Williamson Act contracts for these 27 parcels were provided as an
6 attachment to the Authority's letter.

7 STANDING

8 29. Petitioner has a direct and beneficial interest in Respondents' full and complete
9 compliance with CEQA, Proposition 1A, anti-discrimination law, the Williamson Act, and other legal
10 requirements applicable to the Section and the Project as a whole, and therefore have standing to bring
11 this action.

12 30. Pursuant to California Code of Civil Procedure section 367, organizational petitioners
13 have standing to sue if they or someone they represent have either suffered or are threatened with an
14 injury of sufficient magnitude to reasonably assure the relevant facts and issues will be adequately
15 presented. Here, the County has standing to sue because the residents and businesses of the County, as
16 well as County visitors and others, are threatened with unmitigated and significant injuries caused by
17 Respondents' approval of this Section of the statewide Project and implementation of the Section
18 Approvals and/or the ICS.

19 EXHAUSTION OF ADMINISTRATIVE REMEDIES

20 AND INADEQUATE REMEDIES AT LAW

21 31. Petitioner objected to the Section and the adequacy of its environmental review during
22 the administrative process, and fully exhausted its administrative remedies to the extent possible within
23 the time allowed by Respondent. Petitioner and other commenters appeared at various public hearings
24 and submitted written comments raising the issues set forth herein.

25 32. 32. In addition, Petitioner is excused from exhausting its administrative remedies
26 because the periods of time allowed for public review and comment on the Draft EIR and Final EIR
27 were so unreasonably short that Respondent precluded effective public and agency participation and
28 made it impossible for Petitioner and others to identify all of the ways in which Respondent and the

1 Final EIR failed to comply with CEQA and other applicable laws. The time allowed by Respondent for
2 public review and comment on the Final EIR was clearly unreasonable and denied a meaningful
3 opportunity for informed public and agency participation and thereby effectively precluded Petitioner
4 and others from exhausting their administrative remedies.

5 33. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless
6 this Court grants the requested writ of mandate and injunctive relief. In the absence of such remedies,
7 the Authority's Section Approvals would proceed in violation of state law.

8 34. Petitioner has complied with Public Resources Code section 21167.7 by filing a copy of
9 this petition with the California Attorney General. A copy of that notice is attached as Exhibit A.

10 35. Petitioner has complied with Public Resources Code section 21167.5 by providing the
11 Authority with notice of intention to commence the action. A copy of that notice is attached as Exhibit
12 B.

13 36. Petitioner elects to prepare the administrative record. A copy of that election is attached
14 as Exhibit C.

15 **PRIVATE ATTORNEY GENERAL**

16 37. This proceeding involves enforcement of important rights affecting the public interest.
17 Issuance of the relief requested in this Petition will confer a substantial benefit on the public, including
18 citizens, residents, businesses and taxpayers of the County, and will result in the enforcement of
19 important public rights by requiring Respondents to comply with CEQA, Proposition 1A, anti-
20 discrimination law, and the Williamson Act and other legal requirements applicable to the Project; by
21 voiding the Section Approvals and prohibiting Respondents from taking further actions with respect to
22 the Section and/or the ICS until it has complied with those legal requirements; and by prohibiting
23 Respondents and Real Parties in Interest from undertaking any portion of the Section and/or the ICS
24 until Respondents have fully complied with these legal requirements.

25 38. Petitioner brings this action on behalf of its constituents and the public at large in order
26 to enforce important public rights pursuant to Code of Civil Procedure section 1021.5. Petitioner has
27 no financial interest in the outcome of this proceeding and the necessity and financial burden of
28 enforcement of these public rights entitles Petitioner to an award of reasonable attorneys' fees pursuant

1 to that section.

2 **FIRST CAUSE OF ACTION**
3 **(VIOLATIONS OF CEQA)**

4 39. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
5 their entirety, as though fully set forth herein.

6 40. CEQA requires the Authority, the lead agency, to conduct adequate environmental
7 review prior to making any formal decision regarding projects subject to the Act. (CEQA Guidelines, §
8 15004). The Section and the Project as a whole are subject to CEQA.

9 41. CEQA imposes upon the Authority a clear, present and mandatory duty to certify an EIR
10 only if the EIR fully discloses to the public and decisionmakers the significant environmental effects
11 that may occur due to implementation of a project and only if all feasible alternatives and mitigation
12 measures have been incorporated to avoid or reduce these impacts. Here, the EIR lacked the necessary
13 analysis, avoidance, and mitigation.

14 **A. Improper Tiering Off of Statewide and Bay Area PEIRs and Inadequate Incorporation by**
15 **Reference of Information in Technical Appendices.**

16 42. Respondents prejudicially abused their discretion, in violation of CEQA, by tiering off of
17 the decertified versions of the Bay Area PEIR.

18 43. Respondents prejudicially abused their discretion, in violation of CEQA, by failing to
19 provide the required “road map” to the analysis of two first-tier programmatic environmental review
20 documents for the Project that the Section EIR purports to tier off.

21 44. For example, the EIR does not address all of the inconsistencies between the Section’s
22 design and the assumed design of the statewide Train System, as described and analyzed in the 2005
23 Program EIR (“2005 PEIR”). For example, the EIR does not address the inconsistency between the
24 Section’s 120-foot-wide at-grade right-of-way, the 50-foot-wide right-of-way assumed in the Program
25 EIR, and the assumption that the Section could be built within the existing freight railroad right-of-way.
26 The Section’s larger right-of-way that will not encroach on freight railroad right-of-way will result in
27 substantially more severe impacts than those analyzed and disclosed at the program-level.
28

1 45. Similarly, Respondents failed to provide the required “road map” for information and
2 analyses buried among thousands of pages of technical appendices. As a consequence, reviewing
3 public agencies and the public were unable to determine how this Section’s impacts and other issues
4 may or may not have been addressed in the two first-tier documents and in the EIR appendices. For
5 example, without a better road map it was impossible to tell how the Section’s impacts contribute to the
6 significant and unavoidable impacts identified in the multiple first-tier PEIRs.

7 **B. Inadequate Project Description.**

8 46. The EIR’s description of alternative alignments for the Section (i.e., its “project
9 description”) was inadequate under CEQA.

10 47. Respondents prejudicially abused their discretion, in violation of CEQA, by failing to
11 describe, in sufficient detail, all aspects of the Section’s alternative alignments for the purpose of
12 conducting the required environmental analysis.

13 48. Respondents prejudicially abused their discretion, in violation of CEQA, by deferring
14 key project design and infrastructure decisions until after Section approval, thus preventing informed
15 analysis of the environmental impacts of those aspects of the design and infrastructure. The Final EIR
16 does not satisfy the Authority’s own “minimum” informational requirements set forth in the Technical
17 Memorandum 15% Design Scope Guidelines (TM 0.1), adopted in 2008.

18 49. The Final EIR failed to provide an adequate project description which accurately
19 identifies fundamental Project characteristics, and provides only such limited information concerning
20 the Section which is available at the preliminary design stage, which is insufficient to inform the public
21 and the decision-makers of the site-specific environmental impacts of the Section and results in a
22 premature and general analysis of potential impacts rather than the site-specific analysis required by
23 CEQA for a project-level EIR.

24 50. The vague nature of the Section’s design at the Draft EIR stage also led to
25 inconsistencies in project design information between the revised Draft EIR, the Final EIR, and
26 applications for necessary permits that misled the public. For example, the Final EIR stated that the
27 Section would require 11,300,000 cubic yards of fill material while the Authority’s Indirect Source
28 Review application to the San Joaquin Valley Air Pollution Control District (submitted after release of

1 the Final EIR) states that the section will require 25,000,000 cubic yards of fill material. By
2 substantially underestimating the amount of dirt that will be imported to construct elevated earthen
3 berms and other Section structures, the Final EIR grossly understated the associated environmental
4 impacts and therefore misinformed the public and decisionmakers.

5 51. The lack of an adequate project description renders adequate analysis of the Section's
6 environmental impacts impossible. The EIR's project description fails to satisfy CEQA.

7 **C. Improper Piecemealing of Environmental Analysis.**

8 52. CEQA requires that environmental review documents analyze "the whole of an action."
9 (CEQA Guidelines, § 15378.) California courts have strictly enforced CEQA's prohibition on
10 "piecemealing," to ensure that the EIR passes muster as a document that provides "adequacy,
11 completeness, and a good faith effort at full disclosure." (CEQA Guidelines, §§ 15378, 15151.) Courts
12 have mandated such an approach to ensure that environmental considerations not become submerged by
13 chopping a large project into many little ones, each with a potential impact on the environment, which
14 cumulatively may have disastrous consequences.

15 53. The Authority prejudicially abused its discretion, in violation of CEQA, by failing to
16 consider the entire ICS, as a whole, in the EIR. Read together, Proposition 1A and the Federal Railroad
17 Administration require the Authority to construct a "usable segment" with "independent utility," which
18 in this case is the ICS. By analyzing the impacts of the arbitrarily defined Section in isolation from the
19 contributing impacts of the 24-mile portion of the neighboring Merced-to-Fresno section, the Authority
20 denied the public and decisionmakers the information concerning the impacts of the ICS as a whole.
21 The 2005 Program EIR also failed to analyze the ICS, since it relied on inaccurate assumptions
22 concerning the Train System's right-of-way and deferred such analysis to later review.

23 54. CEQA requires the analysis of reasonably foreseeable future expansions or actions as
24 part of the "whole of the project" that must be analyzed in an EIR.

25 55. The EIR fails to analyze the impacts associated with using the Section for Amtrak
26 service and as a track for testing of high-speed trains. Because the Authority announced that such
27 foreseeable uses of the Section were contemplated to meet federal funding "independent utility"
28 requirements, and because the statement of overriding considerations adopted by the Authority relies on

1 such foreseeable uses as Section benefits justifying its adverse impacts, the uses are reasonably
2 foreseeable future actions that were required to be considered in the EIR.

3 56. The EIR's omission of these feasible alternative uses has led to its failure to properly
4 analyze and mitigate the Section's significant and adverse environmental impacts, most notably its
5 cumulative impacts.

6 **D. Failure to Adequately Disclose, Analyze, and Mitigate Impacts.**

7 57. An EIR must provide adequate, complete, and full disclosure of the environmental
8 impacts of a proposed project. (CEQA Guidelines, § 15151.) The conclusions reached in the EIR must
9 be supported by substantial evidence. (Pub. Resources Code, § 21082.2(a).)

10 58. Concrete, enforceable mitigation measures must be "required in, or incorporated into" a
11 project. (Pub. Resources Code, § 21081(a)(1).)

12 59. An EIR must evaluate the efficacy of mitigation measures in order to properly disclose
13 to decisionmakers and the public a project's environmental costs. For this reason, the adoption of
14 deferred, vague, or inadequate mitigation measures violates CEQA.

15 60. Deferral of the identification of necessary mitigation measures, the analysis of their
16 feasibility, and the adoption of enforceable mitigation measures with specific performance standards
17 also violates CEQA.

18 61. The FEIR is inadequate because many of the assumptions, analyses, and conclusions
19 regarding potential impacts are not supported by facts, data, or other substantial evidence. CEQA
20 requires a lead agency to explicitly reference the scientific and other sources which support the
21 discussions, analyses, and conclusions in an EIR. In violation of this requirement, the discussion of
22 many potential environmental impacts within the FEIR as well as the efficacy of mitigation measures
23 consists of conclusory statements which are not supported by any scientific data or other facts.

24 62. The EIR for the Section includes numerous impact areas in which the necessary impact
25 disclosure was omitted and the adoption of concrete, enforceable mitigation measures was improperly
26 deferred in violation of CEQA, including, but not limited to, the following:

27 **1. Agricultural Resources Impacts**

28 63. The EIR's analysis of the Section's impacts to agricultural resources is incomplete and

1 otherwise inadequate and the EIR relies on improper deferral of effective mitigation measures for these
2 impacts. The EIR does not provide the detailed analysis of agricultural impacts that the 2005 PEIR
3 promised.

4 64. One of the Section's greatest adverse impacts is the loss of prime agricultural land and
5 other important farmland. The Final EIR underestimated these impacts. Further, the EIR lacks
6 substantial evidence supporting the determinations concerning impacts to agricultural lands caused by
7 parcel severance.

8 65. For example, the EIR failed to identify remnant parcels that would be created as the
9 Section cuts through existing agricultural parcels. The Final EIR could not fully disclose the Section's
10 impacts to the public and decisionmakers without disclosing these remnant parcels in its analysis. The
11 EIR also failed to disclose the percentage of those parcels that were determined to be "directly impacted
12 lands", those that were not, and the reasons for each determination. Commenters requested these
13 explanations and maps depicting the noneconomic and economic remainder parcels before the Final
14 EIR was released, but the Authority refused to provide the information and maps.

15 66. The EIR also fails to consider long-term impacts to agricultural lands caused by the
16 severance of utilities and infrastructure caused by the Section. Construction and operation of the
17 Section may separate irrigation and drainage canals and internal access roads from agricultural lands for
18 prolonged periods, rendering them unusable and potentially destroying permanent crops such as
19 orchards

20 67. Because the EIR downplayed the Section's impacts on agricultural lands, the Authority
21 did not adopt adequate mitigation for those impacts. Respondents failed to incorporate all feasible
22 mitigation measures to reduce impacts to agricultural lands.

23 68. Mitigation incorporated into the Section, such as financial compensation for severed
24 parcels and facilities, may be ineffective in preserving agricultural use since severing parcels and
25 facilities could fundamentally compromise the viability of agriculture on these properties.

26 69. The Authority claimed that a detailed analysis of the impacts caused by parcel severance
27 could not be performed due to the many local and parcel-specific factors that determine whether a
28 severed parcel would remain economically viable for farming. This stance contradicts the Authority's

1 previous admission, contained in the 2005 Program EIR, that detailed severance analysis would be
2 addressed in project-level EIRs. The 2005 Program EIR stated, "Potential severance locations are
3 discussed qualitatively, not quantitatively, in this program-level document. Parcel-specific information
4 is also not considered in this program-level analysis. Project-level farmland conversion and severance
5 impacts that are determined to be significant adverse impacts would be addressed in subsequent project-
6 level documents."

7 70. By failing to consider all severance impacts, the Final EIR underreported impacts to
8 agricultural lands, making even the limited mitigation adopted less effective.

9 71. The Authority failed to consider potentially feasible mitigation measures, raised by
10 commenters, to reduce direct, indirect, and cumulative impacts to agricultural lands. One potentially
11 feasible measure involves enhancing lands to make them more productive for agriculture and offset
12 acreage that may be lost during Section construction and operation. Enhancement could involve
13 remediating salt and selenium-contaminated soils, introducing water supplies to properties without
14 them, and drilling and deepening groundwater wells.

15 72. Since the Authority failed to analyze and require these and other potentially feasible
16 mitigation measures, it failed to proceed in a manner required by law.

17 **2. Impacts to Mineral and Energy Resources**

18 73. The EIR did not adequately analyze or mitigate the impacts to mineral and energy
19 resources.

20 74. While the EIR acknowledges that the Section alternative alignments would traverse
21 productive oil and gas fields, it downplays the extent of the impacts.

22 75. The EIR substantially underreported the quantity of mineral resources that will be
23 extracted for Section construction.

24 76. As a consequence of the inadequate analysis of impacts to mineral and energy resources,
25 the EIR failed to adequately avoid and mitigate such impacts.

26 **3. Impacts to Water Supply**

27 77. The EIR did not adequately analyze or mitigate the impacts to water supply.
28

1 78. While the EIR acknowledges that the Section alternative alignments would destroy
2 existing groundwater wells, it fails to fully identify the extent of these impacts and otherwise
3 downplays the extent of the impacts.

4 79. As a consequence of the inadequate analysis of impacts to water supply resources and
5 facilities, the EIR failed to adequately avoid and mitigate such impacts.

6 **4. Air Quality Impacts**

7 80. The EIR's analysis of air quality impacts was deficient in many respects, including, but
8 not limited to, the following:

9 81. The Final EIR's analysis of Greenhouse Gas (GHG) emissions during construction and
10 associated mitigation measures failed to include the GHG emissions from the production of materials
11 used in construction. Concrete production creates very high GHG emissions. Concrete produced for
12 the Section may result in emissions high enough to offset twenty to thirty years of the Section's GHG-
13 reduction benefits. If properly analyzed, the impact would be considered significant and unavoidable
14 under CEQA.

15 82. The Section's compliance with CEQA and state and federal air quality laws depends on
16 the San Joaquin Valley Air Pollution Control District and Authority's agreement on a Voluntary
17 Emissions Reduction Agreement ("VERA") because the EIR's air quality analysis depends upon this
18 measure for mitigation of construction air quality impacts. However, no VERA was approved prior to
19 certification of the EIR, nor was such a document disclosed to the public.

20 83. Thus, the VERA could not be evaluated by the public or decisionmakers to determine its
21 potential effectiveness, and the Section's construction air quality mitigation has been improperly
22 deferred.

23 84. While a mitigation measure addressed the localized air quality impacts of concrete batch
24 plants, no analysis was offered for the global climate change impacts of concrete batch plants necessary
25 for Section construction.

26 **5. Impacts to Biological Resources**

27 85. The Authority obtained incomplete baseline information regarding sensitive plants and
28 species affected by the Section. The survey methods employed are not a proper substitute for the

1 survey methods ordinarily required by resource agencies. Proper surveys should have been performed
2 as a prerequisite to impact analysis, before certification of the project-level EIR, not deferred until later.

3 86. The surveys for rare plants did not follow guidelines set forth by the California
4 Department of Fish and Wildlife (CDFW). For example, the CDFW guidelines were not adhered to in
5 the preparation of the extent of surveys, use of systematic field techniques, timing and number of visits,
6 and use of reference sites.

7 87. The survey extent for many biological resources was too small.

8 88. Thus, in these and in other respects, the Authority could not establish a legally adequate
9 baseline for impacts to biological resources.

10 89. Despite incomplete baseline information regarding the presence of rare plants, wetlands,
11 and special-status wildlife both on and near the Section's potential permanent and temporary
12 disturbance areas, the EIR concludes that many of the Section's impacts to these biological resources
13 will be reduced to less-than-significant levels through mitigation. As the botanical, wetland and
14 wildlife surveys have not provided an adequate basis for analyzing potential Section impacts, the
15 Authority failed to proceed in a manner required by law.

16 90. In other areas, the EIR claims that impacts will be reduced below a threshold of
17 significance through future studies, project design, and mitigation. However, many of the mitigation
18 measures lack specific performance standards and are therefore improperly deferred.

19 91. The EIR's deferral of analysis and mitigation, without clear and enforceable
20 performance standards, prevents the public and decisionmakers from determining the Section's actual
21 impacts on biological resources, both before and after mitigation, in violation of CEQA.

22 **6. Geotechnical Impacts**

23 92. The Draft EIR failed to include detailed geotechnical information necessary to design
24 the Section and analyze its impacts.

25 93. The Final EIR failed to adequately analyze the risks of ground rupture, seismically
26 induced ground deformations, shallow groundwater, soil corrosivity, and land subsidence. Other
27 evidence in the administrative record demonstrates that these risks are moderate to high along the
28 Section alignment. This evidence demonstrates the EIR's failure to disclose the Section's system-wide

1 potentially adverse geotechnical impacts to decisionmakers and the public.

2 94. Thus, the Final EIR failed to analyze or mitigate the potential impacts of track
3 movement and ground instability, which may require the use of different engineering strategies to
4 stabilize the track.

5 **7. Historic and Cultural Resource Impacts**

6 95. The EIR failed to adequately analyze the significance of impacts to historic and cultural
7 resources. The analysis of these impacts improperly deferred the investigation of resources that will be
8 impacted.

9 96. The Authority's own reports demonstrate that the EIR failed to disclose the significance
10 of construction impacts on known cultural resources and artifacts. When commenters objected to
11 creating these impacts, the Authority asserted the comments raised no new issues.

12 97. The Authority's failure to incorporate into the EIR information contained in the
13 addendum to the Archaeological Treatment Plan disclosing the Section's potentially significant impacts
14 on cultural and historic resources violates CEQA.

15 98. The EIR failed to adequately disclose, analyze, and mitigate urban decay impacts to
16 historic districts that could result from Section construction and operation.

17 99. The deficiencies of the impact analysis resulted in inadequate mitigation for these
18 impacts.

19 **8. Land Use Incompatibility Impacts**

20 100. The EIR failed to adequately analyze the Section's growth inducing impacts.

21 101. The potential Section station near Hanford and heavy maintenance facility alternative
22 locations are proposed in rural areas that are not capable of providing urban services.

23 102. The EIR failed to adequately analyze and mitigate impacts caused by the Section's
24 interference with existing rail transportation facilities and systems.

25 103. The federal Department of Transportation Act of 1966 section 4(f) stipulates that
26 Department of Transportation agencies cannot approve the use of land from publicly owned parks,
27 recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the
28 relevant agency has incorporated feasible alternatives to minimize harm to the park or recreational area

1 that may occur. The EIR did not consider feasible alternatives to minimize harm to these resources.
2 Further, the Draft EIR and Revised Draft EIR failed to disclose that the Section would require takings
3 of resources protected by section 4(f).

4 104. The EIR also failed to incorporate an alternative alignment that would have avoided
5 impacts to Mill Creek and the Kern River Parkway.

6 105. Section 6(f) of the Land and Water Conservation Act requires that the conversion of
7 lands or facilities acquired with Land and Water Conservation Act funds be coordinated with the
8 Department of the Interior. Replacement in kind is typically required.

9 106. The EIR failed to disclose that the Section would require conversion of resources
10 protected by section 6(f). The EIR also failed to consider alternative alignments that would avoid
11 impacts to these resources.

12 9. Traffic Impacts

13 107. The impacts of permanent road closures were not adequately analyzed in the EIR. For
14 example, permanent road closures would have significant disruptive effects on agricultural operations
15 where agricultural lands would be deprived of roadway access by the road closures. In lieu of
16 analyzing the Section's traffic impacts, the EIR provided for a future Traffic Management Plan that
17 would identify and respond to various traffic impacts. This Traffic Management Plan is an
18 impermissible deferral of analysis and mitigation for this impact.

19 108. In some areas, Section-related road closures would require much longer out-of-direction
20 travel than predicted in the EIR, resulting in greater Vehicles Miles Travelled and associated air quality
21 impacts that were inadequately disclosed, analyzed, and mitigated.

22 10. Noise and Vibration Impacts

23 109. The EIR failed to adequately analyze and mitigate noise and vibration impacts.

24 110. Mitigation for noise and vibration impacts is inadequate under CEQA.

25 11. Impacts to Visual Quality

26 111. The Draft EIR failed to disclose impacts of sound walls that would be constructed to
27 reduce the Section's noise impacts.

28 112. The aesthetic impacts of new, higher-clearance designs for bridges over Kings River

1 were not disclosed in the Draft EIR.

2 113. Mitigation for visual quality impacts was impermissibly deferred.

3 **12. Cumulative Impacts**

4 114. The EIR must list and analyze all projects that may lead to cumulative impacts,
5 including those “outside the control of the agency.” (CEQA Guidelines, § 15130(b)(1).) It also must
6 define the geographic scope of the area affected by each type of cumulative impact, and explain its use
7 of any particular limitation on that scope. (CEQA Guidelines, § 15130(b)(3).)

8 115. The neighboring sections are reasonably foreseeable future projects, especially the
9 Merced-to-Fresno section (or at least the southern 24 miles of this section). It was apparent as early as
10 December 2010 that parts of two sections (Merced-to-Fresno and Fresno-to-Bakersfield) would first be
11 built concurrently and comprise the ICS. Yet, the Final EIR failed to identify the neighboring sections
12 as pending or future projects in the lists provided as appendices to the cumulative impacts analysis.
13 The Final EIR’s discussion of cumulative impacts for almost every resource area fails to consider the
14 cumulative impacts of the Section in combination with the contributing cumulative impacts of each of
15 the other Central Valley sections. As a result, the Final EIR underreports the Section’s cumulative
16 impacts when combined with the other contributing sections and the impacts of all other past, present
17 and reasonably foreseeable future projects with related impacts.

18 116. The EIR’s discussion of cumulative impacts on biological resources during construction
19 purports to consider the impacts of constructing neighboring sections. However, the analysis does not
20 provide any information concerning construction phasing; does not provide any quantitative
21 information concerning impacts that will be caused by other Train System sections; and concludes,
22 without any supporting evidence, that the Section’s contribution to construction-period impacts on
23 biological resources will be less than cumulatively considerable. Despite concluding that the Section
24 may have cumulative impacts on wildlife movement, the EIR failed to identify mitigation to avoid or
25 reduce this impact.

26 117. The EIR’s discussion concerning the Section’s cumulative impacts to agricultural lands
27 asserts that the analysis was based in part on “the Merced to Fresno and Bakersfield to Palmdale
28 sections,” however, this claim is unsupported by any citation, reference, or substantiation. The

1 remainder of the discussion concerning cumulative impacts to agricultural lands does not include any
2 reference or information concerning the contributing cumulative impacts of the Merced-to-Fresno
3 section and the other Central Valley sections.

4 **E. Inadequate Analysis of Secondary Impacts Caused by Mitigation Measures**

5 118. The EIR failed to analyze the secondary impacts of mitigation measures. Mitigation that
6 may cause significant secondary impacts include, but are not limited to, the following: (1) construction
7 of sound walls, (2) modification of roadway segments and intersections, (3) habitat enhancement.

8 119. Where the analysis purports to consider the secondary impacts of mitigation, it is not
9 supported by any substantial evidence.

10 **F. Failure to Recirculate the EIR After Introducing Significant New Information**

11 120. The CEQA Guidelines provide “significant new information” requires recirculation
12 when: (1) a new significant environmental impact would result from the project or from a new
13 mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an
14 environmental impact would result unless mitigation measures are adopted that reduce the impact to a
15 level of insignificance; or (3) a feasible project alternative or mitigation measure considerably different
16 from others previously analyzed would clearly lessen the environmental impacts of the project, but the
17 project’s proponents decline to adopt it. (CEQA Guidelines, § 15088.5.)

18 121. The Final EIR and the Errata to the Final EIR contains significant new information, not
19 disclosed in the Draft EIR and Revised Draft EIR, with respect to the description of the Section, the
20 impact analysis and the mitigation measures for the Section. As a result of these changes, the Final EIR
21 and Errata reveal that the Section will result in both new and increased significant impacts and the
22 document includes other significant new information that trigger the recirculation requirement.

23 122. In failing to recirculate the Draft EIR, the Authority violated CEQA, specifically Public
24 Resources Code, section 21092.1 and CEQA Guidelines, section 15088.5, the Authority deprived
25 members of the public and other public agencies, including responsible and trustee agencies, the
26 opportunity to review and comment on the new impact analysis, the significance of the Section’s
27 various impacts under the Final EIR’s new analysis, possible mitigation measures for the newly
28 disclosed impacts, the cumulative impacts of the Section under the new impact analysis, and

1 alternatives that could lessen the newly disclosed impacts.

2 123. By failing to recirculate a new, Revised Draft EIR for public review and comment, the
3 Authority abused its discretion.

4 **G. Inadequate Analysis of Alternatives.**

5 124. CEQA imposes upon the Authority a clear, present and mandatory duty to analyze and
6 adopt all feasible mitigation measures and consider a reasonable range of alternatives, including any
7 feasible alternative which would substantially lessen the significant environmental effects of the
8 Section.

9 125. In addition to an inadequate analysis of impacts, the EIR fails to consider a reasonable
10 range of alternatives and instead, except for the mandatory “no project” alternative, examined only
11 minor variations in portions of the proposed alignment. For example, the Authority refused to consider
12 alternative alignment corridors such as Highway 99, or the alternative of tunneling in the area of urban
13 centers such as the City of Hanford. In addition, the Authority’s 2005 “preferred alignment” was not
14 addressed in the Section’s EIR. Instead, the EIR only considered multiple variations on the BNSF
15 alignment. In sharp contrast to the 2005 BNSF “preferred alignment,” these new variations plow
16 through a great deal of prime farmland and bypass the towns of Hanford and Corcoran, rather than run
17 through them.

18 126. The EIR fails to comply with CEQA because it did not consider a reasonable range of
19 alternatives The EIR's failure to consider other alternatives that could avoid or substantially reduce any
20 of the Project’s significant impacts, such as an alignment that follows established transportation
21 corridors or an alternative technology that would avoid or minimize one or more significant impacts
22 (e.g., maglev), renders the analysis inadequate and incomplete.

23 **H. Inadequate Consultation, Deficient Review Periods, Failure to Timely Provide Supporting**
24 **Technical Materials and Deficient Responses to Public and Agency Comments.**

25 127. Respondents did not adequately consult with Petitioner and other public agencies when
26 Respondents prepared the FEIR, as is required by CEQA. Respondents have never worked with
27 Petitioner to alter routes or explore alternatives to address impacts on Petitioner’s resources or other
28 public facilities.

1 128. The periods of time allowed for public review and comment of the Draft EIR, Revised
2 Draft EIR, and Final EIR were so unreasonably short that they precluded effective public and agency
3 participation. The Revised Draft EIR, including the appendices, reference material and previous
4 environmental documents from which it purportedly tiered, comprised many thousands of pages of
5 material. In the revisions alone, over 900 pages of text and nearly 1,200 pages of maps and drawings
6 were added to an already voluminous DEIR. Despite the large volume of material and the enormous
7 public interest in this Section of the Project and its potential impacts on the environment, Respondents
8 allowed only 90 days for public review and comment, which was clearly unreasonable and effectively
9 precluded any meaningful opportunity for informed public and agency participation. Although the time
10 allowed exhibited facial compliance with CEQA's minimum requirements, it clearly violated
11 Respondents' duty to provide an adequate opportunity for public review and comment and to ensure
12 informed public participation in the environmental review process. (CEQA Guidelines, §§ 15086,
13 15087, 15201.)

14 129. Respondents have also failed to provide relevant information, including all supporting
15 technical analysis and reports, to Petitioner and the public in a timely manner pursuant to Public
16 Resources Code section 21003.1, which requires that information relevant to the significant effects of a
17 project be made available as soon as possible to the general public and other public agencies. For
18 example, the computer disc provided by Respondents to Petitioner containing the Revised Draft EIR
19 did not contain all of the information necessary for Petitioner to review the analysis of Section impacts.

20 130. An EIR must include adequate written responses to all comments, both oral and written,
21 raising significant environmental issues received by the lead agency during the public comment period.

22 131. Respondents violated CEQA by failing to provide good faith reasoned responses to all
23 comments raising significant environmental issues concerning the DEIR. Many responses were
24 perfunctory or conclusory, many vaguely pointed to analysis that purported to address the comment but
25 did not, and many were not supported by substantial evidence.

26 132. Respondents prejudicially abused their discretion, in violation of CEQA, by failing to
27 consider all proposals for mitigation, presented in comments concerning the DEIR and the FEIR, that
28 would address impacts identified as significant and unavoidable.

1 **H. The Authority's Findings and Statement of Overriding Considerations are Not Supported**
2 **by Substantial Evidence.**

3 133. CEQA prohibits approval of projects with significant adverse environmental impacts if
4 there are feasible alternatives or mitigation measures that would reduce or eliminate those impacts.
5 (Pub. Resources Code, § 21002; CEQA Guidelines, § 15021(a)(2).)

6 134. In order to approve a project despite significant unmitigated impacts on the environment,
7 the Authority was required to adopt a statement of overriding considerations. (Pub. Resources Code, §
8 21081.)

9 135. A statement of overriding considerations must find, "[t]here is no feasible way to lessen
10 or avoid the significant effect..." of the project. (CEQA Guidelines, §§ 15043, 15093(b).) This finding
11 must be supported by substantial evidence. (CEQA Guidelines, § 15093.) Otherwise, if the project can
12 be economically successful with a less damaging alternative or additional feasible mitigation, then
13 CEQA requires that alternative or mitigation.

14 136. A valid statement of overriding considerations must also find that the project's benefits
15 outweigh its significant adverse environmental impacts. (CEQA Guidelines, §§ 15043, 15093.) This
16 finding must also be supported by substantial evidence. (CEQA Guidelines, § 15093.)

17 137. The Authority adopted a statement of overriding considerations, specifically finding that
18 specific considerations make infeasible the mitigation measures and alternatives identified in the EIR
19 and that the Project benefits outweigh its unmitigated significant impacts.

20 138. The Authority rejected feasible alternatives and mitigation measures that would lessen or
21 avoid the Section's significant adverse effects, in violation of CEQA. The EIR contains no support for
22 the claim that certain suggested alternatives and mitigation measures are infeasible. For example, the
23 Authority's findings in support of its rejection of the Highway 99 alignment is not supported by
24 substantial evidence.

25 139. The Section's purported benefits, including without limitation, improved air quality,
26 reduced greenhouse gas emissions, and eliminated congestion between cities, are illusory or otherwise
27 unsupported by substantial evidence.

28 140. Without substantial evidence to support findings regarding mitigation obligations or

1 project benefits, the Authority's adoption of a statement of overriding considerations for the Section
2 violates CEQA.

3 141. At all times relevant hereto, the Authority has been able to require preparation of an
4 adequate EIR as required by CEQA. However, the Authority has failed and refused to undertake
5 preparation of an EIR in an adequate manner, notwithstanding the substantial evidence of significant
6 adverse environmental impacts that will result from the Section and of feasible mitigation measures and
7 alternatives that could avoid or substantially lessen such impacts while still achieving the fundamental
8 objectives of the Section.

9 142. At all times relevant hereto, the Authority has been able to require preparation and
10 adoption of adequate written findings supported by substantial evidence for the Section, as required by
11 CEQA Guidelines section 15091, but has failed and refused to do so.

12 143. At all times relevant hereto, the Authority has been able to require preparation and
13 adoption of an adequate Statement of Overriding Considerations supported by substantial evidence for
14 the Section, as required by CEQA Guidelines section 15093, but has failed and refused to do so.

15 144. At all times relevant hereto, the Authority has been able to require preparation and
16 adoption of an adequate mitigation monitoring and reporting program for the Section, as required by
17 CEQA Guidelines section 15097, but has failed and refused to do so.

18 **SECOND CAUSE OF ACTION**

19 **(VIOLATION OF STREETS AND HIGHWAYS CODE)**

20 145. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
21 their entirety, as though fully set forth herein.

22 146. Proposition 1A, as approved by the voters and codified by the Legislature in 2008
23 includes a number of restrictions on the design of the Train System. More specifically, the Streets and
24 Highways Code section 2704.09(g) mandates that: "In order to reduce impacts on communities and the
25 environment, the alignment for the high-speed train system shall follow existing transportation or utility
26 corridors to the extent feasible...." Section 2704.09(h) states "Stations shall be located in areas with
27 good access to local mass transit or other modes of transportation." Section 2704.09(h) states "The
28

1 high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and
2 impacts on the natural environment.”

3 147. The Section’s substantial deviation from existing transportation corridors violates
4 Proposition 1A’s direction to restrict the Train System to existing transportation corridors where
5 feasible.

6 148. The Authority approved the Kings/Tulare Regional Station-East Alternative, which
7 station is not located in an area with good access to local mass transit or other modes of transportation.
8 In this respect, the Section violates Proposition 1A’s direction concerning the location of Train System
9 stations.

10 149. The Section’s inducement of sprawl growth violates Proposition 1A’s direction to limit
11 sprawl growth.

12 **THIRD CAUSE OF ACTION**
13 **(VIOLATION OF ANTI-DISCRIMINATION LAW)**

14 150. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
15 their entirety, as though fully set forth herein.

16 151. Government Code section 11135(a) provides: “No person in the State of California
17 shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual
18 orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the
19 benefits of, or be unlawfully subjected to discrimination under, any program or activity that is
20 conducted, operated, or administered by the state or by any state agency, is funded directly by the state,
21 or receives any financial assistance from the state.”

22 152. Title VI of the federal Civil Rights Act, Section 601, provides that “no person in the
23 United States shall, on the ground of race, color, or national origin, be excluded from participation in,
24 be denied the benefits of, or be subjected to discrimination under any program or activity receiving
25 federal financial assistance.” This provision prohibits discrimination in state or local programs or
26 activities that receive federal funds. The Authority receives federal funding for the Section and the
27 Train System. Section 602 of the Civil Rights Act allows a violation to be established by proof of
28 disparate impact.

1 153. In direct contravention of Government Code section 11135 and the Civil Rights Act, the
2 final EIR admits:

3 *minority and low income populations concentrated in urban areas along the project area*
4 *in Fresno, Corcoran, Wasco, Shafter and Bakersfield, as well as in rural areas such as*
5 *Newark Avenue, 5th Avenue and Waukena Avenue, and Crome would also bear*
6 *disproportionately high and adverse project period impacts.* These impacts would
7 include an increase in both ambient noise levels and vibratory impacts above standards;
8 disruption of communities and the displacement of community facilities, changes or loss
9 of park resources, decreases in visual quality, and cumulative impacts for noise and
10 vibration, communities, and aesthetics and visual resources. (Final EIR p. 6-2, emphasis
11 added.)

12 154. Commenter Ybarra Companies noted that the Central Valley through which
13 approximately 114 miles of the Train System would cut has an impacted population that is 43 percent
14 Hispanic, a total minority population of 56.6 percent, and an annual median income substantially below
15 the California average. As these and other comments noted, the corridor takes out homes, businesses,
16 churches, shelters, and other community facilities where minority and low-income individuals live,
17 work, and play. The EIR, in the section on Environmental Justice, notes, “The environmental justice
18 (EJ) analysis conducted for the Fresno-to-Bakersfield Section of the HST EIR identified the potential
19 for the project to result in disproportionately high and adverse effects on minority and low-income
20 populations.”

21 155. Agencies such as the Authority that are receiving federal funds are required by
22 Executive Order 12898 and Title VI of the Civil Rights Act of 1964 to avoid such impacts. California
23 agencies such as the Authority are prohibited by Government Code section 11135 from approving
24 activities with disproportionately high and adverse effects on minority and low-income populations.

25 156. Since the EIR itself identifies the potential for disproportionately high adverse effects on
26 minority and low-income populations, the Authority was required to avoid such impacts – including
27 evaluating alternative alignments or designs including tunneling that would avoid these impacts.

28 157. By refusing to consider a Highway 99, or downtown BNSF alignment after significant
disproportionate impacts were identified, the Authority harms already economically challenged
populations. Many people rely heavily on Amtrak to commute to work, obtain groceries and supplies,

1 and to attend doctors' appointments and conduct other business. By eliminating Amtrak in urban
2 centers such as Hanford and bypassing a majority Hispanic, limited English speaking population, the
3 Authority eliminated access to the only reasonable means of access to necessary public services for an
4 already underserved population.

5 158. By failing to avoid disproportionate impacts to minority and low income populations, the
6 Authority violated state and federal anti-discrimination laws.

7 **FOURTH CAUSE OF ACTION**
8 **(VIOLATION OF THE WILLIAMSON ACT)**

9 159. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
10 their entirety, as though fully set forth herein

11 160. The Williamson Act (Gov. Code, § 51200 et seq.) recognizes the importance of
12 agriculture to the economy of the State of California and seeks to maintain agricultural use on the
13 agricultural land.

14 161. Government Code section 51292 states, "If the land is agricultural land covered under a
15 contract pursuant to this chapter for any public improvement, that there is no other land within or
16 outside the preserve on which it is reasonably feasible to locate the public improvement."

17 162. The Authority identified at least 275 parcels (1,515 acres) of protected farmland affected
18 by the Section. The Authority failed to properly establish that there is no other land that is not subject
19 to Williamson Act contractual preservation on which it was reasonably feasible to locate the Section.

20 163. The Williamson Act provides that it is the duty of a public agency to minimize the
21 amount of agricultural preserve land taken. The Authority attempted to undertake such an evaluation in
22 the EIR, but it only compared the amount of agricultural preserve land impacted by the two Hanford
23 bypass alternatives. By failing to compare these two alternatives with the original 2005 BNSF
24 alignment, and with potential Interstate 5 and Highway 99 alignments, the Authority failed to comply
25 with the Williamson Act.

26 164. The Authority asserted it is not required to consider alignments it eliminated in the 2005
27 Program EIR. However, under the statutory obligation of the Williamson Act, the Authority is required
28 to consider such alignments before determining alternatives that avoid affecting Williamson Act land

1 are infeasible.

2 ///

3 ///

4 **FIFTH CAUSE OF ACTION**

5 **(DECLARATORY RELIEF)**

6 165. Petitioner re-alleges and incorporates by reference all of the preceding and succeeding
7 paragraphs of this Petition in their entirety as though fully set forth herein.

8 166. Petitioners seek a judicial declaration that the Authority's certification of the EIR and
9 adoption of the Section Approvals failed to comply with the requirements of CEQA and that the
10 Authority violated Proposition 1A, anti-discrimination law, and the Williamson Act.

11 167. Section 1060 of the Code of Civil Procedure provides that:

12 Any person ... who desires a declaration of his or her rights or duties with respect
13 to another, or in respect to, in, over or upon property, may, in cases of actual
14 controversy relating to the legal rights and duties of the respective parties, bring
15 an original action in superior court for a declaration of his or her rights and duties
16 in the premises, including a determination of any question of construction or
17 validity arising under the instrument or contract. He or she may ask for a
18 declaration of rights or duties, either alone or with other relief ...

17 168. The Authority has mandatory duties to comply with CEQA, Proposition 1A, anti-
18 discrimination law, and the Williamson Act and other legal requirements applicable to the Section, the
19 ICS, and the Project as a whole.

20 169. Petitioner has the right to enforce these mandatory duties.

21 170. Petitioner has no other plain, speedy and adequate remedy at law, and will suffer
22 irreparable injury unless it receives the relief requested in this Petition.

23 171. An actual controversy exists between Petitioner and Respondents as to whether the
24 actions and conduct of the Authority alleged in this Petition have violated CEQA and other
25 laws as identified herein. This controversy implicates the legality of the manner in which
26 Respondents have proceeded in certifying the EIR and giving the Section Approvals, the
27 validity of the Respondents' actions with respect thereto and, consequently, the legal
28 ability of Respondents to take further actions to develop the Section and/or the ICS based

1 upon the Section Approvals. Petitioner contends that each and all such actions and
2 conduct have violated and will violate these laws. Petitioner is informed and believes, and
3 based thereon alleges, that Respondents dispute these contentions. A judicial resolution of
4 that controversy is now required pursuant to Code of Civil Procedure section 1060.

5 172. Petitioner requests a judicial declaration that Respondents' actions and conduct alleged
6 in this Petition have violated and will violate CEQA and other laws identified herein. Such declaration
7 is necessary and appropriate at this time under the circumstances in order that Petitioner and
8 Respondents may ascertain their rights and duties.

9 **SIXTH CAUSE OF ACTION**

10 **(INJUNCTIVE RELIEF)**

11 173. Petitioner re-alleges and incorporates by reference all of the preceding and succeeding
12 paragraphs of this Petition in their entirety as though fully set forth herein.

13 174. Petitioner requests injunctive relief pursuant to Code of Civil Procedure section 526,
14 which provides, in pertinent part, that:

15 (a) An injunction may be granted in the following cases:

16 (1) When it appears by the complaint that the plaintiff is entitled to the relief
17 demanded, and the relief, or any part thereof, consists in restraining the commission
18 or continuance of the act complained of, either for a limited period or perpetually.

19 (2) When it appears by the complaint or affidavits that the commission or
20 continuance of some act during the litigation would produce waste, or great or
21 irreparable injury, to a party to the action.

22 (3) When it appears, during the litigation, that a party to the action is doing, or
23 threatens, or is about to do, or is procuring or suffering to be done, some act in
24 violation of the rights of another party to the action respecting the subject of the
25 action, and tending to render the judgment ineffectual.

26 (4) When pecuniary compensation would not afford adequate relief.

27 (5) Where it would be extremely difficult to ascertain the amount of compensation
28 which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial
proceedings.

(Code Civ. Proc., § 526, subd. (a).)

175. The EIR acknowledges that the Section will have unmitigated significant adverse

1 environmental effects in the Section area.

2 176. Unless restrained by this Court *pendent lite*, Respondents threaten to commence
3 construction of all or portions of the Section and thereby irrevocably alter the physical environment in
4 the project area, causing permanent and irreparable harm to sensitive environmental resources and
5 irreparable harm to the public health, safety and welfare, without adequate consideration of potential
6 harm to the environment of the project area as required by CEQA. No monetary damages or other legal
7 remedy could compensate Petitioner, its residents and visitors, or the public at large for the harm
8 threatened by Respondents.

9 177. Therefore, Petitioner requests that this Court issue its decree and order enjoining and
10 restraining Respondents, and all of their officers, employees, agents, representatives and all other
11 persons acting by, through, on behalf of or in concert with them, and any of them, from taking any
12 action in furtherance of or in reliance on the Authority's certification of the EIR and/or adoption of the
13 Section Approvals which could alter or affect in any manner the existing physical environment in the
14 project area.

15 178. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law. No
16 money damages or other legal remedy could adequately compensate Petitioner for the irreparable harm
17 described in the preceding paragraphs.

18 **PRAYER FOR RELIEF**

19 In each of the respects enumerated above, Respondents have violated its duties under law, abused
20 their discretion, failed to proceed in the manner required by law, and decided the matters complained of
21 without the support of substantial evidence. Accordingly, the certification of the EIR and the approval
22 of the Section must be set aside.

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1 WHEREFORE, Petitioner prays for relief as follows:

2 1. That the Court issue a peremptory writ of mandate, commanding Respondents:

3 A. To set aside and vacate certification of the EIR, Findings and Statement of
4 Overriding Considerations, and Mitigation Monitoring and Reporting Program supporting the Section;

5 B. To set aside and vacate any approvals for the Section based upon the EIR and
6 Findings and Statement of Overriding Considerations supporting the Section; and

7 C. To prepare and certify a legally adequate EIR for the Section so that Respondents
8 will have a complete disclosure document before them, identify for the decision-makers and public the
9 potential significant impacts of the Section, and enable them to formulate realistic and feasible
10 alternatives and mitigation measures to avoid those impacts;

11 2. That the Court determine and declare: (1) that Respondents violated CEQA, Proposition
12 1A, anti-discrimination law, and the Williamson Act in connection with the Section Approvals; (2) that
13 the Section Approvals were given in violation of these laws; and (3) that the Section Approvals are void;

14 3. That the Court determine and declare that the Final EIR for the Section is inadequate as a
15 matter of law;

16 4. That the Court determine and declare that the CEQA Findings and Statement of
17 Overriding Considerations are inadequate and not supported by substantial evidence and, as such, are
18 void;

19 5. That the Court issue a preliminary and/or permanent injunction enjoining Respondents
20 and all other persons acting by, through or on behalf of them, from engaging in any activity, any
21 procurement of equipment, materials or supplies, or any irretrievable commitment of resources in
22 connection with implementing the Section and the ICS that would result in any change in the physical
23 environment of the project area while this Petition is pending, and such other relief as may be sought;

24 6. That the Court issue an order enjoining Respondents and Real Parties in Interest from
25 taking any action to construct any portion of the Section or to develop or alter the Section site in any
26 way that could result in a significant adverse impact on the environment unless and until a lawful
27 approval is obtained from Respondents after the preparation and consideration of an adequate EIR;

28 7. That, upon motion of Petitioner, the Court award and order Respondents to pay

1 Petitioner's reasonable attorneys' fees in connection with this proceeding;

2 8. That the Court order Respondents to pay Petitioner's costs of suit; and

3 9. That the Court order such other and further relief as may be just and proper.

4 DATE: June 5, 2014

THERESA A. GOLDNER
County Counsel

By: 

Charles F. Collins, Deputy
Attorneys for Petitioner and Plaintiff
COUNTY OF KERN

EXHIBIT A

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COUNTY OF KERN
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SACRAMENTO - GORDON D. SCHABER COURTHOUSE**

17 COUNTY OF KERN, a subdivision of the
State of California,

18 Petitioner and Plaintiff,

19 v.

20 CALIFORNIA HIGH-SPEED RAIL
21 AUTHORITY, a public agency, and DOES
1 through 10, inclusive,

22 Respondents and
23 Defendants.

24 DOES 11 through 50,

25 Real Party in Interest.
26
27
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Case No.

**NOTICE TO ATTORNEY GENERAL OF
ACTION ALLEGING HARM TO THE
ENVIRONMENT [PUB. RES. CODE §
21167.7; CODE CIV. PROC. § 388]**

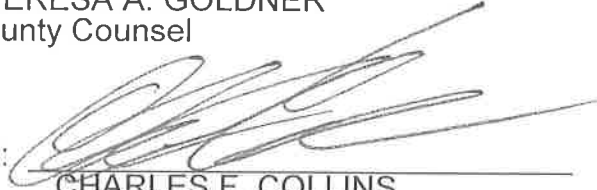
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TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

PLEASE TAKE NOTICE pursuant to Public Resources Code section 21167.7 that, on or about April 2, 2007, petitioner and plaintiff County of Kern ("Kern County") filed a petition for peremptory writ of mandate and complaint for declaratory and injunctive relief against respondent and defendant California High-Speed Rail Authority ("CHSRA"). The petition seeks, among other things, to compel CHSRA to proceed in the manner required by the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* with respect to its approval of the proposed Fresno to Bakersfield Segment of the California high-speed rail system project. A true and correct copy of the petition is attached hereto as Exhibit "1" and is incorporated herein by this reference.

DATED: June 5, 2014

THERESA A. GOLDNER
County Counsel

BY: 
CHARLES F. COLLINS
Attorneys for Petitioner and Plaintiff
COUNTY OF KERN

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Attorney for Petitioner and Plaintiff COUNTY OF KERN

Exempt from Filing Fees
Pursuant to Government
Code Section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE

COUNTY OF KERN,

Petitioner and Plaintiff,

v.

CALIFORNIA HIGH-SPEED RAIL
AUTHORITY, and DOES 1 through 20

Respondents and Defendants.

and ROES I to X;

Real Parties in Interest.

) CASE NO.:

)

) **PETITION FOR WRIT OF MANDATE AND**

) **COMPLAINT FOR DECLARATORY AND**

) **INJUNCTIVE RELIEF**

)

) [Code of Civil Proc., §§ 526, 1060, 1085, 1094.5;

) Civ. Code § 1060; California Environmental

) Quality Act ("CEQA"), Public Resources Code, §§

) 21000 et seq.; Safe, Reliable High-Speed Passenger

) Train Bond Act for the 21st Century, Streets and

) Highways Code, §§ 2704 et seq.; Anti-

) Discrimination Law, Government Code, § 11135;

) and Williamson Act, Government Code, §§ 51200

) et seq.]

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Ex. 1

1 significant new information about geotechnical impacts, Valley Fever, and interference with existing
2 railroad lines, among other things, was not disclosed until after the Revised Draft EIR was released in
3 2012. In addition, the Authority revised the Section design to include additional elevated sections and
4 other substantial changes to the alignment without recirculating the EIR.

5 4. Through the EIR for the Section, the Authority acknowledged some of the Section's
6 significant impacts, but, due to numerous analytical deficiencies, failed to disclose and analyze the full
7 scope and severity of these impacts to decisionmakers or to the public. The Authority also improperly
8 deferred the formulation of necessary mitigation measures and failed to incorporate a number of
9 suggested feasible alternatives and mitigation measures to avoid the Section's adverse impacts on the
10 Central Valley, as required by CEQA. The Authority's failure to analyze alternatives and adequately
11 mitigate impacts also resulted in its violating the Williamson Act and anti-discrimination law since
12 feasible alternatives along existing transportation corridors would have avoided or reduced impacts to
13 prime agricultural lands and disproportionate impacts to minority and low income populations.
14 Therefore, the Authority's decision approving the Section must be set aside as contrary to law.

15 5. Petitioner requests a peremptory writ of mandate ordering the Authority to (a) set aside
16 and void its certification of the EIR and all of its Section Approvals, (b) comply with the requirements
17 of CEQA and all other applicable legal requirements prior to taking further actions with respect to this
18 Section of the Train System and the Initial Construction Section ("ICS") and (c) not take any further
19 actions with respect to the Section and the ICS until it has complied with those legal requirements.

20 6. Petitioner also seeks (a) a determination and declaration that the Authority violated
21 CEQA, Proposition 1A, anti-discrimination law, the Williamson Act and other applicable legal
22 requirements in connection with the Section Approvals, that the Section Approvals were given in
23 violation of those laws, and that the Section Approvals are void and (b) an order enjoining Respondents
24 and Real Parties in Interest from taking any further actions with respect to the Section Approvals and
25 from undertaking any physical activity on the Section in furtherance of the Section Approvals unless
26 and until Respondents comply with CEQA and all other applicable laws and legally appropriate
27 entitlement governmental approvals for the Section have been granted.

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1 is ignorant of the true names and capacities, whether individual, corporate, governmental, or otherwise,
2 of the Respondents named in this Petition as DOES 1 through 20, inclusive, and therefore sue these
3 Respondents by these fictitious names. Petitioner will amend this Petition to allege their true names
4 and capacities when ascertained. Petitioner is informed and believes, and based thereon alleges, that
5 each of these fictitiously named Respondents are responsible in some manner for the acts or omissions
6 alleged herein.

7 12. Real parties in interest named as ROES I to X, inclusive, are given fictitious names
8 because their names and capacities are presently unknown to Petitioner. Petitioner will amend this
9 Petition to allege their true names and capacities when ascertained. Petitioner is informed and believes,
10 and based thereon alleges, that each of these fictitiously named Real parties in interest derive some
11 benefit or entitlement from the Section Approvals.

12 STATEMENT OF FACTS

13 13. For the Fresno-to-Bakersfield Section of the Train System, the Authority and Federal
14 Railroad Administration conducted simultaneous CEQA and NEPA review. The Federal Railroad
15 Administration ("FRA") review is ongoing – its Record of Decision has not yet been issued.

16 14. The EIR for the Section is a project-level EIR that explicitly tiers off of several program
17 EIRs. Two of these program EIRs have been decertified in their entirety as a result of judicial
18 determinations that Respondent failed to comply with the requirements of CEQA.

19 15. The Authority released a Draft EIR/EIS ("Draft EIR") for the Section on August 12,
20 2011. The 60-day public comment period ended October 13, 2011.

21 16. In response to comments received from federal agencies and others on the Section
22 alternatives, the Authority revised the Draft EIR to include additional route and station variations on the
23 original alignment. Specifically, the Authority added new alignment variations and station locations
24 west of Hanford, an additional variation through Bakersfield, and other alterations to the existing
25 Fresno-to-Bakersfield alignment alternatives. However, the Authority did not add alternative corridors
26 outside the original proposed corridor alignment such as along Highway 99, nor did the Authority
27 analyze alternative designs of the proposed alignment such as tunneling or trenching in urban areas.

28 17. The Revised Draft EIR/EIS (hereinafter, the "Revised Draft EIR") was released in July

1 2012. The public comment period began on July 20, 2012 and was extended to October 19, 2012.

2 18. Petitioner, other agencies, and members of the public submitted comments during the
3 comment periods for the Draft EIR and Revised Draft EIR.

4 19. The Final EIR/EIS ("Final EIR") was released by the Authority on April 18, 2014. The
5 Final EIR contained many pages of new information in a substantially revised environmental impact
6 analysis and in the Responses to Comments. This new information included new potentially significant
7 impacts on additional agricultural lands, oil and gas fields and individual wells, environmental justice
8 communities, and parks and recreation facilities, among other newly disclosed impacts.

9 20. After release of the Final EIR, the Authority informed two public agencies, several
10 businesses, and numerous individuals that their comments and the Authority's responses to those
11 comments had been "inadvertently omitted" from the Final EIR. The Authority published an "Errata"
12 to the FEIR prior to the public hearing, which Errata added the omitted comments and responses to the
13 FEIR and included other substantive changes to the document.

14 21. Released just days before the May 6-7 Board meeting, the proposed CEQA Findings and
15 Statement of Overriding Considerations for the Section would override significant and unavoidable
16 impacts in the categories of noise and vibration, socioeconomic, communities, and environmental
17 justice, agricultural lands, aesthetics and visual resources, cultural resources, and cumulative impacts.
18 When adopted, the Statement of Overriding Considerations would override these allegedly unmitigable
19 adverse impacts based on the Section's purported greenhouse gas reduction benefits, and benefits
20 related to the Train System's potential use for conventional passenger rail, as a high-speed test track,
21 among others.

22 22. The public hearing on the Section's approval was scheduled for the May 6-7, 2014
23 meeting of the Authority Board.

24 23. On May 5, the Authority applied to the San Joaquin Valley Air Pollution Control District
25 for an Indirect Source Review permit, the first step to preparing a Voluntary Emissions Reduction
26 Agreement to mitigate adverse air pollution impacts during construction and operation. The application
27 disclosed for the first time that 70 miles of the 114-mile Section (the portions of the Section within
28 Construction Package ("CP") 1c, CP2, and CP3) would require 24 million cubic yards of imported fill

1 dirt. This contrasted sharply with EIR's disclosure that only 11.3 million cubic yards of fill dirt would
2 be needed for the entire Section. The application thus demonstrates that the EIR substantially
3 underestimated the amount of fill dirt required for the Section and the associated impacts caused by
4 excavating, transporting, screening, spreading, and compacting the additional amount of fill dirt.

5 24. At the May 6 hearing, numerous aggrieved individuals, businesses, local government
6 agencies, and groups spoke in opposition to the Section's approval. Individuals, public agency
7 representatives, businesses and agricultural interests voiced concerns related to, among other things, the
8 short time period for reviewing the extensive new information presented in the Final EIR, the changes
9 to the Section's alignment through the Hanford area, destruction of productive agricultural lands, the
10 failure to analyze the impacts of constructing the ICS, the failure to analyze the Section's cumulative
11 impacts, and the Authority's failure to mitigate other adverse impacts of the Section.

12 25. On May 7, 2014, the Board voted to certify the EIR and approve a portion of the
13 Section, from Mariposa Street in Fresno to 7th Standard Road, northwest of Bakersfield. The Board
14 took this action in spite of the concerns raised by individuals, public agency representatives, businesses
15 and agricultural interests at the May 6 hearing.

16 26. At the same hearing on May 7, the Board approved a Memorandum of Understanding
17 with the San Joaquin Valley Air Pollution Control District. However, a Voluntary Emissions
18 Reduction Agreement has not yet been disclosed to the public or approved.

19 27. The Authority posted a Notice of Determination pursuant to CEQA on May 8, 2014.

20 28. On May 16, 2014, the Authority provided a notice of public acquisition of Williamson
21 Act lands (lands subject to preservation contracts under the Williamson Act) for the Fresno-to-
22 Bakersfield Section of the Train System to the California Department of Conservation. The notice
23 included maps of agricultural lands to be taken or impacted by the Section. Although the maps were
24 apparently produced in March 2014, they were not included in the EIR or elsewhere in the review
25 process for the Section before the May 7, 2014 approval. During the administrative process for the
26 Section, commenters had requested that such maps be made available so that the public could determine
27 which severed remainder parcels were determined to be "uneconomic", i.e., not viable for continued
28 agricultural production. The maps revealed a number of very small, oddly shaped, and/or isolated

1 agricultural remainder parcels that will likely be uneconomic but were not counted as directly impacted
2 by the Section. The Authority acknowledged in this letter that, because of changes to the Section's
3 preferred alignment and roadway overpass expansions, twenty-seven (27) new Williamson Act
4 contracts for preservation of parcels of agricultural land would be impacted. These impacts had not
5 been previously identified. The Williamson Act contracts for these 27 parcels were provided as an
6 attachment to the Authority's letter.

7 STANDING

8 29. Petitioner has a direct and beneficial interest in Respondents' full and complete
9 compliance with CEQA, Proposition 1A, anti-discrimination law, the Williamson Act, and other legal
10 requirements applicable to the Section and the Project as a whole, and therefore have standing to bring
11 this action.

12 30. Pursuant to California Code of Civil Procedure section 367, organizational petitioners
13 have standing to sue if they or someone they represent have either suffered or are threatened with an
14 injury of sufficient magnitude to reasonably assure the relevant facts and issues will be adequately
15 presented. Here, the County has standing to sue because the residents and businesses of the County, as
16 well as County visitors and others, are threatened with unmitigated and significant injuries caused by
17 Respondents' approval of this Section of the statewide Project and implementation of the Section
18 Approvals and/or the ICS.

19 EXHAUSTION OF ADMINISTRATIVE REMEDIES

20 AND INADEQUATE REMEDIES AT LAW

21 31. Petitioner objected to the Section and the adequacy of its environmental review during
22 the administrative process, and fully exhausted its administrative remedies to the extent possible within
23 the time allowed by Respondent. Petitioner and other commenters appeared at various public hearings
24 and submitted written comments raising the issues set forth herein.

25 32. 32. In addition, Petitioner is excused from exhausting its administrative remedies
26 because the periods of time allowed for public review and comment on the Draft EIR and Final EIR
27 were so unreasonably short that Respondent precluded effective public and agency participation and
28 made it impossible for Petitioner and others to identify all of the ways in which Respondent and the

1 Final EIR failed to comply with CEQA and other applicable laws. The time allowed by Respondent for
2 public review and comment on the Final EIR was clearly unreasonable and denied a meaningful
3 opportunity for informed public and agency participation and thereby effectively precluded Petitioner
4 and others from exhausting their administrative remedies.

5 33. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless
6 this Court grants the requested writ of mandate and injunctive relief. In the absence of such remedies,
7 the Authority's Section Approvals would proceed in violation of state law.

8 34. Petitioner has complied with Public Resources Code section 21167.7 by filing a copy of
9 this petition with the California Attorney General. A copy of that notice is attached as Exhibit A.

10 35. Petitioner has complied with Public Resources Code section 21167.5 by providing the
11 Authority with notice of intention to commence the action. A copy of that notice is attached as Exhibit
12 B.

13 36. Petitioner elects to prepare the administrative record. A copy of that election is attached
14 as Exhibit C.

15 PRIVATE ATTORNEY GENERAL

16 37. This proceeding involves enforcement of important rights affecting the public interest.
17 Issuance of the relief requested in this Petition will confer a substantial benefit on the public, including
18 citizens, residents, businesses and taxpayers of the County, and will result in the enforcement of
19 important public rights by requiring Respondents to comply with CEQA, Proposition 1A, anti-
20 discrimination law, and the Williamson Act and other legal requirements applicable to the Project; by
21 voiding the Section Approvals and prohibiting Respondents from taking further actions with respect to
22 the Section and/or the ICS until it has complied with those legal requirements; and by prohibiting
23 Respondents and Real Parties in Interest from undertaking any portion of the Section and/or the ICS
24 until Respondents have fully complied with these legal requirements.

25 38. Petitioner brings this action on behalf of its constituents and the public at large in order
26 to enforce important public rights pursuant to Code of Civil Procedure section 1021.5. Petitioner has
27 no financial interest in the outcome of this proceeding and the necessity and financial burden of
28 enforcement of these public rights entitles Petitioner to an award of reasonable attorneys' fees pursuant

1 to that section.

2 **FIRST CAUSE OF ACTION**
3 **(VIOLATIONS OF CEQA)**

4 39. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
5 their entirety, as though fully set forth herein.

6 40. CEQA requires the Authority, the lead agency, to conduct adequate environmental
7 review prior to making any formal decision regarding projects subject to the Act. (CEQA Guidelines, §
8 15004). The Section and the Project as a whole are subject to CEQA.

9 41. CEQA imposes upon the Authority a clear, present and mandatory duty to certify an EIR
10 only if the EIR fully discloses to the public and decisionmakers the significant environmental effects
11 that may occur due to implementation of a project and only if all feasible alternatives and mitigation
12 measures have been incorporated to avoid or reduce these impacts. Here, the EIR lacked the necessary
13 analysis, avoidance, and mitigation.

14 **A. Improper Tiering Off of Statewide and Bay Area PEIRs and Inadequate Incorporation by**
15 **Reference of Information in Technical Appendices.**

16 42. Respondents prejudicially abused their discretion, in violation of CEQA, by tiering off of
17 the decertified versions of the Bay Area PEIR.

18 43. Respondents prejudicially abused their discretion, in violation of CEQA, by failing to
19 provide the required “road map” to the analysis of two first-tier programmatic environmental review
20 documents for the Project that the Section EIR purports to tier off.

21 44. For example, the EIR does not address all of the inconsistencies between the Section’s
22 design and the assumed design of the statewide Train System, as described and analyzed in the 2005
23 Program EIR (“2005 PEIR”). For example, the EIR does not address the inconsistency between the
24 Section’s 120-foot-wide at-grade right-of-way, the 50-foot-wide right-of-way assumed in the Program
25 EIR, and the assumption that the Section could be built within the existing freight railroad right-of-way.
26 The Section’s larger right-of-way that will not encroach on freight railroad right-of-way will result in
27 substantially more severe impacts than those analyzed and disclosed at the program-level.
28

1 45. Similarly, Respondents failed to provide the required “road map” for information and
2 analyses buried among thousands of pages of technical appendices. As a consequence, reviewing
3 public agencies and the public were unable to determine how this Section’s impacts and other issues
4 may or may not have been addressed in the two first-tier documents and in the EIR appendices. For
5 example, without a better road map it was impossible to tell how the Section’s impacts contribute to the
6 significant and unavoidable impacts identified in the multiple first-tier PEIRs.

7 **B. Inadequate Project Description.**

8 46. The EIR’s description of alternative alignments for the Section (i.e., its “project
9 description”) was inadequate under CEQA.

10 47. Respondents prejudicially abused their discretion, in violation of CEQA, by failing to
11 describe, in sufficient detail, all aspects of the Section’s alternative alignments for the purpose of
12 conducting the required environmental analysis.

13 48. Respondents prejudicially abused their discretion, in violation of CEQA, by deferring
14 key project design and infrastructure decisions until after Section approval, thus preventing informed
15 analysis of the environmental impacts of those aspects of the design and infrastructure. The Final EIR
16 does not satisfy the Authority’s own “minimum” informational requirements set forth in the Technical
17 Memorandum 15% Design Scope Guidelines (TM 0.1), adopted in 2008.

18 49. The Final EIR failed to provide an adequate project description which accurately
19 identifies fundamental Project characteristics, and provides only such limited information concerning
20 the Section which is available at the preliminary design stage, which is insufficient to inform the public
21 and the decision-makers of the site-specific environmental impacts of the Section and results in a
22 premature and general analysis of potential impacts rather than the site-specific analysis required by
23 CEQA for a project-level EIR.

24 50. The vague nature of the Section’s design at the Draft EIR stage also led to
25 inconsistencies in project design information between the revised Draft EIR, the Final EIR, and
26 applications for necessary permits that misled the public. For example, the Final EIR stated that the
27 Section would require 11,300,000 cubic yards of fill material while the Authority’s Indirect Source
28 Review application to the San Joaquin Valley Air Pollution Control District (submitted after release of

1 the Final EIR) states that the section will require 25,000,000 cubic yards of fill material. By
2 substantially underestimating the amount of dirt that will be imported to construct elevated earthen
3 berms and other Section structures, the Final EIR grossly understated the associated environmental
4 impacts and therefore misinformed the public and decisionmakers.

5 51. The lack of an adequate project description renders adequate analysis of the Section's
6 environmental impacts impossible. The EIR's project description fails to satisfy CEQA.

7 **C. Improper Piecemealing of Environmental Analysis.**

8 52. CEQA requires that environmental review documents analyze "the whole of an action."
9 (CEQA Guidelines, § 15378.) California courts have strictly enforced CEQA's prohibition on
10 "piecemealing," to ensure that the EIR passes muster as a document that provides "adequacy,
11 completeness, and a good faith effort at full disclosure." (CEQA Guidelines, §§ 15378, 15151.) Courts
12 have mandated such an approach to ensure that environmental considerations not become submerged by
13 chopping a large project into many little ones, each with a potential impact on the environment, which
14 cumulatively may have disastrous consequences.

15 53. The Authority prejudicially abused its discretion, in violation of CEQA, by failing to
16 consider the entire ICS, as a whole, in the EIR. Read together, Proposition 1A and the Federal Railroad
17 Administration require the Authority to construct a "usable segment" with "independent utility," which
18 in this case is the ICS. By analyzing the impacts of the arbitrarily defined Section in isolation from the
19 contributing impacts of the 24-mile portion of the neighboring Merced-to-Fresno section, the Authority
20 denied the public and decisionmakers the information concerning the impacts of the ICS as a whole.
21 The 2005 Program EIR also failed to analyze the ICS, since it relied on inaccurate assumptions
22 concerning the Train System's right-of-way and deferred such analysis to later review.

23 54. CEQA requires the analysis of reasonably foreseeable future expansions or actions as
24 part of the "whole of the project" that must be analyzed in an EIR.

25 55. The EIR fails to analyze the impacts associated with using the Section for Amtrak
26 service and as a track for testing of high-speed trains. Because the Authority announced that such
27 foreseeable uses of the Section were contemplated to meet federal funding "independent utility"
28 requirements, and because the statement of overriding considerations adopted by the Authority relies on

1 such foreseeable uses as Section benefits justifying its adverse impacts, the uses are reasonably
2 foreseeable future actions that were required to be considered in the EIR.

3 56. The EIR's omission of these feasible alternative uses has led to its failure to properly
4 analyze and mitigate the Section's significant and adverse environmental impacts, most notably its
5 cumulative impacts.

6 **D. Failure to Adequately Disclose, Analyze, and Mitigate Impacts.**

7 57. An EIR must provide adequate, complete, and full disclosure of the environmental
8 impacts of a proposed project. (CEQA Guidelines, § 15151.) The conclusions reached in the EIR must
9 be supported by substantial evidence. (Pub. Resources Code, § 21082.2(a).)

10 58. Concrete, enforceable mitigation measures must be "required in, or incorporated into" a
11 project. (Pub. Resources Code, § 21081(a)(1).)

12 59. An EIR must evaluate the efficacy of mitigation measures in order to properly disclose
13 to decisionmakers and the public a project's environmental costs. For this reason, the adoption of
14 deferred, vague, or inadequate mitigation measures violates CEQA.

15 60. Deferral of the identification of necessary mitigation measures, the analysis of their
16 feasibility, and the adoption of enforceable mitigation measures with specific performance standards
17 also violates CEQA.

18 61. The FEIR is inadequate because many of the assumptions, analyses, and conclusions
19 regarding potential impacts are not supported by facts, data, or other substantial evidence. CEQA
20 requires a lead agency to explicitly reference the scientific and other sources which support the
21 discussions, analyses, and conclusions in an EIR. In violation of this requirement, the discussion of
22 many potential environmental impacts within the FEIR as well as the efficacy of mitigation measures
23 consists of conclusory statements which are not supported by any scientific data or other facts.

24 62. The EIR for the Section includes numerous impact areas in which the necessary impact
25 disclosure was omitted and the adoption of concrete, enforceable mitigation measures was improperly
26 deferred in violation of CEQA, including, but not limited to, the following:

27 **1. Agricultural Resources Impacts**

28 63. The EIR's analysis of the Section's impacts to agricultural resources is incomplete and

1 otherwise inadequate and the EIR relies on improper deferral of effective mitigation measures for these
2 impacts. The EIR does not provide the detailed analysis of agricultural impacts that the 2005 PEIR
3 promised.

4 64. One of the Section's greatest adverse impacts is the loss of prime agricultural land and
5 other important farmland. The Final EIR underestimated these impacts. Further, the EIR lacks
6 substantial evidence supporting the determinations concerning impacts to agricultural lands caused by
7 parcel severance.

8 65. For example, the EIR failed to identify remnant parcels that would be created as the
9 Section cuts through existing agricultural parcels. The Final EIR could not fully disclose the Section's
10 impacts to the public and decisionmakers without disclosing these remnant parcels in its analysis. The
11 EIR also failed to disclose the percentage of those parcels that were determined to be "directly impacted
12 lands", those that were not, and the reasons for each determination. Commenters requested these
13 explanations and maps depicting the noneconomic and economic remainder parcels before the Final
14 EIR was released, but the Authority refused to provide the information and maps.

15 66. The EIR also fails to consider long-term impacts to agricultural lands caused by the
16 severance of utilities and infrastructure caused by the Section. Construction and operation of the
17 Section may separate irrigation and drainage canals and internal access roads from agricultural lands for
18 prolonged periods, rendering them unusable and potentially destroying permanent crops such as
19 orchards

20 67. Because the EIR downplayed the Section's impacts on agricultural lands, the Authority
21 did not adopt adequate mitigation for those impacts. Respondents failed to incorporate all feasible
22 mitigation measures to reduce impacts to agricultural lands.

23 68. Mitigation incorporated into the Section, such as financial compensation for severed
24 parcels and facilities, may be ineffective in preserving agricultural use since severing parcels and
25 facilities could fundamentally compromise the viability of agriculture on these properties.

26 69. The Authority claimed that a detailed analysis of the impacts caused by parcel severance
27 could not be performed due to the many local and parcel-specific factors that determine whether a
28 severed parcel would remain economically viable for farming. This stance contradicts the Authority's

1 previous admission, contained in the 2005 Program EIR, that detailed severance analysis would be
2 addressed in project-level EIRs. The 2005 Program EIR stated, "Potential severance locations are
3 discussed qualitatively, not quantitatively, in this program-level document. Parcel-specific information
4 is also not considered in this program-level analysis. Project-level farmland conversion and severance
5 impacts that are determined to be significant adverse impacts would be addressed in subsequent project-
6 level documents."

7 70. By failing to consider all severance impacts, the Final EIR underreported impacts to
8 agricultural lands, making even the limited mitigation adopted less effective.

9 71. The Authority failed to consider potentially feasible mitigation measures, raised by
10 commenters, to reduce direct, indirect, and cumulative impacts to agricultural lands. One potentially
11 feasible measure involves enhancing lands to make them more productive for agriculture and offset
12 acreage that may be lost during Section construction and operation. Enhancement could involve
13 remediating salt and selenium-contaminated soils, introducing water supplies to properties without
14 them, and drilling and deepening groundwater wells.

15 72. Since the Authority failed to analyze and require these and other potentially feasible
16 mitigation measures, it failed to proceed in a manner required by law.

17 2. Impacts to Mineral and Energy Resources

18 73. The EIR did not adequately analyze or mitigate the impacts to mineral and energy
19 resources.

20 74. While the EIR acknowledges that the Section alternative alignments would traverse
21 productive oil and gas fields, it downplays the extent of the impacts.

22 75. The EIR substantially underreported the quantity of mineral resources that will be
23 extracted for Section construction.

24 76. As a consequence of the inadequate analysis of impacts to mineral and energy resources,
25 the EIR failed to adequately avoid and mitigate such impacts.

26 3. Impacts to Water Supply

27 77. The EIR did not adequately analyze or mitigate the impacts to water supply.
28

1 78. While the EIR acknowledges that the Section alternative alignments would destroy
2 existing groundwater wells, it fails to fully identify the extent of these impacts and otherwise
3 downplays the extent of the impacts.

4 79. As a consequence of the inadequate analysis of impacts to water supply resources and
5 facilities, the EIR failed to adequately avoid and mitigate such impacts.

6 **4. Air Quality Impacts**

7 80. The EIR's analysis of air quality impacts was deficient in many respects, including, but
8 not limited to, the following:

9 81. The Final EIR's analysis of Greenhouse Gas (GHG) emissions during construction and
10 associated mitigation measures failed to include the GHG emissions from the production of materials
11 used in construction. Concrete production creates very high GHG emissions. Concrete produced for
12 the Section may result in emissions high enough to offset twenty to thirty years of the Section's GHG-
13 reduction benefits. If properly analyzed, the impact would be considered significant and unavoidable
14 under CEQA.

15 82. The Section's compliance with CEQA and state and federal air quality laws depends on
16 the San Joaquin Valley Air Pollution Control District and Authority's agreement on a Voluntary
17 Emissions Reduction Agreement ("VERA") because the EIR's air quality analysis depends upon this
18 measure for mitigation of construction air quality impacts. However, no VERA was approved prior to
19 certification of the EIR, nor was such a document disclosed to the public.

20 83. Thus, the VERA could not be evaluated by the public or decisionmakers to determine its
21 potential effectiveness, and the Section's construction air quality mitigation has been improperly
22 deferred.

23 84. While a mitigation measure addressed the localized air quality impacts of concrete batch
24 plants, no analysis was offered for the global climate change impacts of concrete batch plants necessary
25 for Section construction.

26 **5. Impacts to Biological Resources**

27 85. The Authority obtained incomplete baseline information regarding sensitive plants and
28 species affected by the Section. The survey methods employed are not a proper substitute for the

1 survey methods ordinarily required by resource agencies. Proper surveys should have been performed
2 as a prerequisite to impact analysis, before certification of the project-level EIR, not deferred until later.

3 86. The surveys for rare plants did not follow guidelines set forth by the California
4 Department of Fish and Wildlife (CDFW). For example, the CDFW guidelines were not adhered to in
5 the preparation of the extent of surveys, use of systematic field techniques, timing and number of visits,
6 and use of reference sites.

7 87. The survey extent for many biological resources was too small.

8 88. Thus, in these and in other respects, the Authority could not establish a legally adequate
9 baseline for impacts to biological resources.

10 89. Despite incomplete baseline information regarding the presence of rare plants, wetlands,
11 and special-status wildlife both on and near the Section's potential permanent and temporary
12 disturbance areas, the EIR concludes that many of the Section's impacts to these biological resources
13 will be reduced to less-than-significant levels through mitigation. As the botanical, wetland and
14 wildlife surveys have not provided an adequate basis for analyzing potential Section impacts, the
15 Authority failed to proceed in a manner required by law.

16 90. In other areas, the EIR claims that impacts will be reduced below a threshold of
17 significance through future studies, project design, and mitigation. However, many of the mitigation
18 measures lack specific performance standards and are therefore improperly deferred.

19 91. The EIR's deferral of analysis and mitigation, without clear and enforceable
20 performance standards, prevents the public and decisionmakers from determining the Section's actual
21 impacts on biological resources, both before and after mitigation, in violation of CEQA.

22 **6. Geotechnical Impacts**

23 92. The Draft EIR failed to include detailed geotechnical information necessary to design
24 the Section and analyze its impacts.

25 93. The Final EIR failed to adequately analyze the risks of ground rupture, seismically
26 induced ground deformations, shallow groundwater, soil corrosivity, and land subsidence. Other
27 evidence in the administrative record demonstrates that these risks are moderate to high along the
28 Section alignment. This evidence demonstrates the EIR's failure to disclose the Section's system-wide

1 potentially adverse geotechnical impacts to decisionmakers and the public.

2 94. Thus, the Final EIR failed to analyze or mitigate the potential impacts of track
3 movement and ground instability, which may require the use of different engineering strategies to
4 stabilize the track.

5 **7. Historic and Cultural Resource Impacts**

6 95. The EIR failed to adequately analyze the significance of impacts to historic and cultural
7 resources. The analysis of these impacts improperly deferred the investigation of resources that will be
8 impacted.

9 96. The Authority's own reports demonstrate that the EIR failed to disclose the significance
10 of construction impacts on known cultural resources and artifacts. When commenters objected to
11 creating these impacts, the Authority asserted the comments raised no new issues.

12 97. The Authority's failure to incorporate into the EIR information contained in the
13 addendum to the Archaeological Treatment Plan disclosing the Section's potentially significant impacts
14 on cultural and historic resources violates CEQA.

15 98. The EIR failed to adequately disclose, analyze, and mitigate urban decay impacts to
16 historic districts that could result from Section construction and operation.

17 99. The deficiencies of the impact analysis resulted in inadequate mitigation for these
18 impacts.

19 **8. Land Use Incompatibility Impacts**

20 100. The EIR failed to adequately analyze the Section's growth inducing impacts.

21 101. The potential Section station near Hanford and heavy maintenance facility alternative
22 locations are proposed in rural areas that are not capable of providing urban services.

23 102. The EIR failed to adequately analyze and mitigate impacts caused by the Section's
24 interference with existing rail transportation facilities and systems.

25 103. The federal Department of Transportation Act of 1966 section 4(f) stipulates that
26 Department of Transportation agencies cannot approve the use of land from publicly owned parks,
27 recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the
28 relevant agency has incorporated feasible alternatives to minimize harm to the park or recreational area

1 that may occur. The EIR did not consider feasible alternatives to minimize harm to these resources.
2 Further, the Draft EIR and Revised Draft EIR failed to disclose that the Section would require takings
3 of resources protected by section 4(f).

4 104. The EIR also failed to incorporate an alternative alignment that would have avoided
5 impacts to Mill Creek and the Kern River Parkway.

6 105. Section 6(f) of the Land and Water Conservation Act requires that the conversion of
7 lands or facilities acquired with Land and Water Conservation Act funds be coordinated with the
8 Department of the Interior. Replacement in kind is typically required.

9 106. The EIR failed to disclose that the Section would require conversion of resources
10 protected by section 6(f). The EIR also failed to consider alternative alignments that would avoid
11 impacts to these resources.

12 **9. Traffic Impacts**

13 107. The impacts of permanent road closures were not adequately analyzed in the EIR. For
14 example, permanent road closures would have significant disruptive effects on agricultural operations
15 where agricultural lands would be deprived of roadway access by the road closures. In lieu of
16 analyzing the Section's traffic impacts, the EIR provided for a future Traffic Management Plan that
17 would identify and respond to various traffic impacts. This Traffic Management Plan is an
18 impermissible deferral of analysis and mitigation for this impact.

19 108. In some areas, Section-related road closures would require much longer out-of-direction
20 travel than predicted in the EIR, resulting in greater Vehicles Miles Travelled and associated air quality
21 impacts that were inadequately disclosed, analyzed, and mitigated.

22 **10. Noise and Vibration Impacts**

23 109. The EIR failed to adequately analyze and mitigate noise and vibration impacts.

24 110. Mitigation for noise and vibration impacts is inadequate under CEQA.

25 **11. Impacts to Visual Quality**

26 111. The Draft EIR failed to disclose impacts of sound walls that would be constructed to
27 reduce the Section's noise impacts.

28 112. The aesthetic impacts of new, higher-clearance designs for bridges over Kings River

1 were not disclosed in the Draft EIR.

2 113. Mitigation for visual quality impacts was impermissibly deferred.

3 **12. Cumulative Impacts**

4 114. The EIR must list and analyze all projects that may lead to cumulative impacts,
5 including those “outside the control of the agency.” (CEQA Guidelines, § 15130(b)(1).) It also must
6 define the geographic scope of the area affected by each type of cumulative impact, and explain its use
7 of any particular limitation on that scope. (CEQA Guidelines, § 15130(b)(3).)

8 115. The neighboring sections are reasonably foreseeable future projects, especially the
9 Merced-to-Fresno section (or at least the southern 24 miles of this section). It was apparent as early as
10 December 2010 that parts of two sections (Merced-to-Fresno and Fresno-to-Bakersfield) would first be
11 built concurrently and comprise the ICS. Yet, the Final EIR failed to identify the neighboring sections
12 as pending or future projects in the lists provided as appendices to the cumulative impacts analysis.
13 The Final EIR’s discussion of cumulative impacts for almost every resource area fails to consider the
14 cumulative impacts of the Section in combination with the contributing cumulative impacts of each of
15 the other Central Valley sections. As a result, the Final EIR underreports the Section’s cumulative
16 impacts when combined with the other contributing sections and the impacts of all other past, present
17 and reasonably foreseeable future projects with related impacts.

18 116. The EIR’s discussion of cumulative impacts on biological resources during construction
19 purports to consider the impacts of constructing neighboring sections. However, the analysis does not
20 provide any information concerning construction phasing; does not provide any quantitative
21 information concerning impacts that will be caused by other Train System sections; and concludes,
22 without any supporting evidence, that the Section’s contribution to construction-period impacts on
23 biological resources will be less than cumulatively considerable. Despite concluding that the Section
24 may have cumulative impacts on wildlife movement, the EIR failed to identify mitigation to avoid or
25 reduce this impact.

26 117. The EIR’s discussion concerning the Section’s cumulative impacts to agricultural lands
27 asserts that the analysis was based in part on “the Merced to Fresno and Bakersfield to Palmdale
28 sections,” however, this claim is unsupported by any citation, reference, or substantiation. The

1 remainder of the discussion concerning cumulative impacts to agricultural lands does not include any
2 reference or information concerning the contributing cumulative impacts of the Merced-to-Fresno
3 section and the other Central Valley sections.

4 **E. Inadequate Analysis of Secondary Impacts Caused by Mitigation Measures**

5 118. The EIR failed to analyze the secondary impacts of mitigation measures. Mitigation that
6 may cause significant secondary impacts include, but are not limited to, the following: (1) construction
7 of sound walls, (2) modification of roadway segments and intersections, (3) habitat enhancement.

8 119. Where the analysis purports to consider the secondary impacts of mitigation, it is not
9 supported by any substantial evidence.

10 **F. Failure to Recirculate the EIR After Introducing Significant New Information**

11 120. The CEQA Guidelines provide “significant new information” requires recirculation
12 when: (1) a new significant environmental impact would result from the project or from a new
13 mitigation measure proposed to be implemented; (2) a substantial increase in the severity of an
14 environmental impact would result unless mitigation measures are adopted that reduce the impact to a
15 level of insignificance; or (3) a feasible project alternative or mitigation measure considerably different
16 from others previously analyzed would clearly lessen the environmental impacts of the project, but the
17 project’s proponents decline to adopt it. (CEQA Guidelines, § 15088.5.)

18 121. The Final EIR and the Errata to the Final EIR contains significant new information, not
19 disclosed in the Draft EIR and Revised Draft EIR, with respect to the description of the Section, the
20 impact analysis and the mitigation measures for the Section. As a result of these changes, the Final EIR
21 and Errata reveal that the Section will result in both new and increased significant impacts and the
22 document includes other significant new information that trigger the recirculation requirement.

23 122. In failing to recirculate the Draft EIR, the Authority violated CEQA, specifically Public
24 Resources Code, section 21092.1 and CEQA Guidelines, section 15088.5, the Authority deprived
25 members of the public and other public agencies, including responsible and trustee agencies, the
26 opportunity to review and comment on the new impact analysis, the significance of the Section’s
27 various impacts under the Final EIR’s new analysis, possible mitigation measures for the newly
28 disclosed impacts, the cumulative impacts of the Section under the new impact analysis, and

1 alternatives that could lessen the newly disclosed impacts.

2 123. By failing to recirculate a new, Revised Draft EIR for public review and comment, the
3 Authority abused its discretion.

4 **G. Inadequate Analysis of Alternatives.**

5 124. CEQA imposes upon the Authority a clear, present and mandatory duty to analyze and
6 adopt all feasible mitigation measures and consider a reasonable range of alternatives, including any
7 feasible alternative which would substantially lessen the significant environmental effects of the
8 Section.

9 125. In addition to an inadequate analysis of impacts, the EIR fails to consider a reasonable
10 range of alternatives and instead, except for the mandatory "no project" alternative, examined only
11 minor variations in portions of the proposed alignment. For example, the Authority refused to consider
12 alternative alignment corridors such as Highway 99, or the alternative of tunneling in the area of urban
13 centers such as the City of Hanford. In addition, the Authority's 2005 "preferred alignment" was not
14 addressed in the Section's EIR. Instead, the EIR only considered multiple variations on the BNSF
15 alignment. In sharp contrast to the 2005 BNSF "preferred alignment," these new variations plow
16 through a great deal of prime farmland and bypass the towns of Hanford and Corcoran, rather than run
17 through them.

18 126. The EIR fails to comply with CEQA because it did not consider a reasonable range of
19 alternatives. The EIR's failure to consider other alternatives that could avoid or substantially reduce any
20 of the Project's significant impacts, such as an alignment that follows established transportation
21 corridors or an alternative technology that would avoid or minimize one or more significant impacts
22 (e.g., maglev), renders the analysis inadequate and incomplete.

23 **H. Inadequate Consultation, Deficient Review Periods, Failure to Timely Provide Supporting**
24 **Technical Materials and Deficient Responses to Public and Agency Comments.**

25 127. Respondents did not adequately consult with Petitioner and other public agencies when
26 Respondents prepared the FEIR, as is required by CEQA. Respondents have never worked with
27 Petitioner to alter routes or explore alternatives to address impacts on Petitioner's resources or other
28 public facilities.

1 128. The periods of time allowed for public review and comment of the Draft EIR, Revised
2 Draft EIR, and Final EIR were so unreasonably short that they precluded effective public and agency
3 participation. The Revised Draft EIR, including the appendices, reference material and previous
4 environmental documents from which it purportedly tiered, comprised many thousands of pages of
5 material. In the revisions alone, over 900 pages of text and nearly 1,200 pages of maps and drawings
6 were added to an already voluminous DEIR. Despite the large volume of material and the enormous
7 public interest in this Section of the Project and its potential impacts on the environment, Respondents
8 allowed only 90 days for public review and comment, which was clearly unreasonable and effectively
9 precluded any meaningful opportunity for informed public and agency participation. Although the time
10 allowed exhibited facial compliance with CEQA's minimum requirements, it clearly violated
11 Respondents' duty to provide an adequate opportunity for public review and comment and to ensure
12 informed public participation in the environmental review process. (CEQA Guidelines, §§ 15086,
13 15087, 15201.)

14 129. Respondents have also failed to provide relevant information, including all supporting
15 technical analysis and reports, to Petitioner and the public in a timely manner pursuant to Public
16 Resources Code section 21003.1, which requires that information relevant to the significant effects of a
17 project be made available as soon as possible to the general public and other public agencies. For
18 example, the computer disc provided by Respondents to Petitioner containing the Revised Draft EIR
19 did not contain all of the information necessary for Petitioner to review the analysis of Section impacts.

20 130. An EIR must include adequate written responses to all comments, both oral and written,
21 raising significant environmental issues received by the lead agency during the public comment period.

22 131. Respondents violated CEQA by failing to provide good faith reasoned responses to all
23 comments raising significant environmental issues concerning the DEIR. Many responses were
24 perfunctory or conclusory, many vaguely pointed to analysis that purported to address the comment but
25 did not, and many were not supported by substantial evidence.

26 132. Respondents prejudicially abused their discretion, in violation of CEQA, by failing to
27 consider all proposals for mitigation, presented in comments concerning the DEIR and the FEIR, that
28 would address impacts identified as significant and unavoidable.

1 **H. The Authority's Findings and Statement of Overriding Considerations are Not Supported**
2 **by Substantial Evidence.**

3 133. CEQA prohibits approval of projects with significant adverse environmental impacts if
4 there are feasible alternatives or mitigation measures that would reduce or eliminate those impacts.
5 (Pub. Resources Code, § 21002; CEQA Guidelines, § 15021(a)(2).)

6 134. In order to approve a project despite significant unmitigated impacts on the environment,
7 the Authority was required to adopt a statement of overriding considerations. (Pub. Resources Code, §
8 21081.)

9 135. A statement of overriding considerations must find, "[t]here is no feasible way to lessen
10 or avoid the significant effect..." of the project. (CEQA Guidelines, §§ 15043, 15093(b).) This finding
11 must be supported by substantial evidence. (CEQA Guidelines, § 15093.) Otherwise, if the project can
12 be economically successful with a less damaging alternative or additional feasible mitigation, then
13 CEQA requires that alternative or mitigation.

14 136. A valid statement of overriding considerations must also find that the project's benefits
15 outweigh its significant adverse environmental impacts. (CEQA Guidelines, §§ 15043, 15093.) This
16 finding must also be supported by substantial evidence. (CEQA Guidelines, § 15093.)

17 137. The Authority adopted a statement of overriding considerations, specifically finding that
18 specific considerations make infeasible the mitigation measures and alternatives identified in the EIR
19 and that the Project benefits outweigh its unmitigated significant impacts.

20 138. The Authority rejected feasible alternatives and mitigation measures that would lessen or
21 avoid the Section's significant adverse effects, in violation of CEQA. The EIR contains no support for
22 the claim that certain suggested alternatives and mitigation measures are infeasible. For example, the
23 Authority's findings in support of its rejection of the Highway 99 alignment is not supported by
24 substantial evidence.

25 139. The Section's purported benefits, including without limitation, improved air quality,
26 reduced greenhouse gas emissions, and eliminated congestion between cities, are illusory or otherwise
27 unsupported by substantial evidence.

28 140. Without substantial evidence to support findings regarding mitigation obligations or

1 project benefits, the Authority's adoption of a statement of overriding considerations for the Section
2 violates CEQA.

3 141. At all times relevant hereto, the Authority has been able to require preparation of an
4 adequate EIR as required by CEQA. However, the Authority has failed and refused to undertake
5 preparation of an EIR in an adequate manner, notwithstanding the substantial evidence of significant
6 adverse environmental impacts that will result from the Section and of feasible mitigation measures and
7 alternatives that could avoid or substantially lessen such impacts while still achieving the fundamental
8 objectives of the Section.

9 142. At all times relevant hereto, the Authority has been able to require preparation and
10 adoption of adequate written findings supported by substantial evidence for the Section, as required by
11 CEQA Guidelines section 15091, but has failed and refused to do so.

12 143. At all times relevant hereto, the Authority has been able to require preparation and
13 adoption of an adequate Statement of Overriding Considerations supported by substantial evidence for
14 the Section, as required by CEQA Guidelines section 15093, but has failed and refused to do so.

15 144. At all times relevant hereto, the Authority has been able to require preparation and
16 adoption of an adequate mitigation monitoring and reporting program for the Section, as required by
17 CEQA Guidelines section 15097, but has failed and refused to do so.

18 **SECOND CAUSE OF ACTION**

19 **(VIOLATION OF STREETS AND HIGHWAYS CODE)**

20 145. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
21 their entirety, as though fully set forth herein.

22 146. Proposition 1A, as approved by the voters and codified by the Legislature in 2008
23 includes a number of restrictions on the design of the Train System. More specifically, the Streets and
24 Highways Code section 2704.09(g) mandates that: "In order to reduce impacts on communities and the
25 environment, the alignment for the high-speed train system shall follow existing transportation or utility
26 corridors to the extent feasible...." Section 2704.09(h) states "Stations shall be located in areas with
27 good access to local mass transit or other modes of transportation." Section 2704.09(h) states "The
28

1 high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and
2 impacts on the natural environment.”

3 147. The Section’s substantial deviation from existing transportation corridors violates
4 Proposition 1A’s direction to restrict the Train System to existing transportation corridors where
5 feasible.

6 148. The Authority approved the Kings/Tulare Regional Station-East Alternative, which
7 station is not located in an area with good access to local mass transit or other modes of transportation.
8 In this respect, the Section violates Proposition 1A’s direction concerning the location of Train System
9 stations.

10 149. The Section’s inducement of sprawl growth violates Proposition 1A’s direction to limit
11 sprawl growth.

12 **THIRD CAUSE OF ACTION**
13 **(VIOLATION OF ANTI-DISCRIMINATION LAW)**

14 150. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
15 their entirety, as though fully set forth herein.

16 151. Government Code section 11135(a) provides: “No person in the State of California
17 shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual
18 orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the
19 benefits of, or be unlawfully subjected to discrimination under, any program or activity that is
20 conducted, operated, or administered by the state or by any state agency, is funded directly by the state,
21 or receives any financial assistance from the state.”

22 152. Title VI of the federal Civil Rights Act, Section 601, provides that “no person in the
23 United States shall, on the ground of race, color, or national origin, be excluded from participation in,
24 be denied the benefits of, or be subjected to discrimination under any program or activity receiving
25 federal financial assistance.” This provision prohibits discrimination in state or local programs or
26 activities that receive federal funds. The Authority receives federal funding for the Section and the
27 Train System. Section 602 of the Civil Rights Act allows a violation to be established by proof of
28 disparate impact.

1 153. In direct contravention of Government Code section 11135 and the Civil Rights Act, the
2 final EIR admits:

3 *minority and low income populations concentrated in urban areas along the project area*
4 *in Fresno, Corcoran, Wasco, Shafter and Bakersfield, as well as in rural areas such as*
5 *Newark Avenue, 5th Avenue and Waukena Avenue, and Crome would also bear*
6 *disproportionately high and adverse project period impacts.* These impacts would
7 include an increase in both ambient noise levels and vibratory impacts above standards;
8 disruption of communities and the displacement of community facilities, changes or loss
of park resources, decreases in visual quality, and cumulative impacts for noise and
vibration, communities, and aesthetics and visual resources. (Final EIR p. 6-2, emphasis
added.)

9 154. Commenter Ybarra Companies noted that the Central Valley through which
10 approximately 114 miles of the Train System would cut has an impacted population that is 43 percent
11 Hispanic, a total minority population of 56.6 percent, and an annual median income substantially below
12 the California average. As these and other comments noted, the corridor takes out homes, businesses,
13 churches, shelters, and other community facilities where minority and low-income individuals live,
14 work, and play. The EIR, in the section on Environmental Justice, notes, "The environmental justice
15 (EJ) analysis conducted for the Fresno-to-Bakersfield Section of the HST EIR identified the potential
16 for the project to result in disproportionately high and adverse effects on minority and low-income
17 populations."

18 155. Agencies such as the Authority that are receiving federal funds are required by
19 Executive Order 12898 and Title VI of the Civil Rights Act of 1964 to avoid such impacts. California
20 agencies such as the Authority are prohibited by Government Code section 11135 from approving
21 activities with disproportionately high and adverse effects on minority and low-income populations.

22 156. Since the EIR itself identifies the potential for disproportionately high adverse effects on
23 minority and low-income populations, the Authority was required to avoid such impacts – including
24 evaluating alternative alignments or designs including tunneling that would avoid these impacts.

25 157. By refusing to consider a Highway 99, or downtown BNSF alignment after significant
26 disproportionate impacts were identified, the Authority harms already economically challenged
27 populations. Many people rely heavily on Amtrak to commute to work, obtain groceries and supplies,
28

1 and to attend doctors' appointments and conduct other business. By eliminating Amtrak in urban
2 centers such as Hanford and bypassing a majority Hispanic, limited English speaking population, the
3 Authority eliminated access to the only reasonable means of access to necessary public services for an
4 already underserved population.

5 158. By failing to avoid disproportionate impacts to minority and low income populations, the
6 Authority violated state and federal anti-discrimination laws.

7 **FOURTH CAUSE OF ACTION**
8 **(VIOLATION OF THE WILLIAMSON ACT)**

9 159. Petitioner re-alleges and incorporates by reference all of the preceding paragraphs in
10 their entirety, as though fully set forth herein

11 160. The Williamson Act (Gov. Code, § 51200 et seq.) recognizes the importance of
12 agriculture to the economy of the State of California and seeks to maintain agricultural use on the
13 agricultural land.

14 161. Government Code section 51292 states, "If the land is agricultural land covered under a
15 contract pursuant to this chapter for any public improvement, that there is no other land within or
16 outside the preserve on which it is reasonably feasible to locate the public improvement."

17 162. The Authority identified at least 275 parcels (1,515 acres) of protected farmland affected
18 by the Section. The Authority failed to properly establish that there is no other land that is not subject
19 to Williamson Act contractual preservation on which it was reasonably feasible to locate the Section.

20 163. The Williamson Act provides that it is the duty of a public agency to minimize the
21 amount of agricultural preserve land taken. The Authority attempted to undertake such an evaluation in
22 the EIR, but it only compared the amount of agricultural preserve land impacted by the two Hanford
23 bypass alternatives. By failing to compare these two alternatives with the original 2005 BNSF
24 alignment, and with potential Interstate 5 and Highway 99 alignments, the Authority failed to comply
25 with the Williamson Act.

26 164. The Authority asserted it is not required to consider alignments it eliminated in the 2005
27 Program EIR. However, under the statutory obligation of the Williamson Act, the Authority is required
28 to consider such alignments before determining alternatives that avoid affecting Williamson Act land

1 are infeasible.

2 ///

3 ///

4 **FIFTH CAUSE OF ACTION**

5 **(DECLARATORY RELIEF)**

6 165. Petitioner re-alleges and incorporates by reference all of the preceding and succeeding
7 paragraphs of this Petition in their entirety as though fully set forth herein.

8 166. Petitioners seek a judicial declaration that the Authority's certification of the EIR and
9 adoption of the Section Approvals failed to comply with the requirements of CEQA and that the
10 Authority violated Proposition 1A, anti-discrimination law, and the Williamson Act.

11 167. Section 1060 of the Code of Civil Procedure provides that:

12 Any person ... who desires a declaration of his or her rights or duties with respect
13 to another, or in respect to, in, over or upon property, may, in cases of actual
14 controversy relating to the legal rights and duties of the respective parties, bring
15 an original action in superior court for a declaration of his or her rights and duties
16 in the premises, including a determination of any question of construction or
17 validity arising under the instrument or contract. He or she may ask for a
18 declaration of rights or duties, either alone or with other relief ...

19 168. The Authority has mandatory duties to comply with CEQA, Proposition 1A, anti-
20 discrimination law, and the Williamson Act and other legal requirements applicable to the Section, the
21 ICS, and the Project as a whole.

22 169. Petitioner has the right to enforce these mandatory duties.

23 170. Petitioner has no other plain, speedy and adequate remedy at law, and will suffer
24 irreparable injury unless it receives the relief requested in this Petition.

25 171. An actual controversy exists between Petitioner and Respondents as to whether the
26 actions and conduct of the Authority alleged in this Petition have violated CEQA and other
27 laws as identified herein. This controversy implicates the legality of the manner in which
28 Respondents have proceeded in certifying the EIR and giving the Section Approvals, the
validity of the Respondents' actions with respect thereto and, consequently, the legal
ability of Respondents to take further actions to develop the Section and/or the ICS based

1 upon the Section Approvals. Petitioner contends that each and all such actions and
2 conduct have violated and will violate these laws. Petitioner is informed and believes, and
3 based thereon alleges, that Respondents dispute these contentions. A judicial resolution of
4 that controversy is now required pursuant to Code of Civil Procedure section 1060.

5 172. Petitioner requests a judicial declaration that Respondents' actions and conduct alleged
6 in this Petition have violated and will violate CEQA and other laws identified herein. Such declaration
7 is necessary and appropriate at this time under the circumstances in order that Petitioner and
8 Respondents may ascertain their rights and duties.

9 **SIXTH CAUSE OF ACTION**
10 **(INJUNCTIVE RELIEF)**

11 173. Petitioner re-alleges and incorporates by reference all of the preceding and succeeding
12 paragraphs of this Petition in their entirety as though fully set forth herein.

13 174. Petitioner requests injunctive relief pursuant to Code of Civil Procedure section 526,
14 which provides, in pertinent part, that:

15 (a) An injunction may be granted in the following cases:

16 (1) When it appears by the complaint that the plaintiff is entitled to the relief
17 demanded, and the relief, or any part thereof, consists in restraining the commission
18 or continuance of the act complained of, either for a limited period or perpetually.

19 (2) When it appears by the complaint or affidavits that the commission or
20 continuance of some act during the litigation would produce waste, or great or
21 irreparable injury, to a party to the action.

22 (3) When it appears, during the litigation, that a party to the action is doing, or
23 threatens, or is about to do, or is procuring or suffering to be done, some act in
24 violation of the rights of another party to the action respecting the subject of the
25 action, and tending to render the judgment ineffectual.

26 (4) When pecuniary compensation would not afford adequate relief.

27 (5) Where it would be extremely difficult to ascertain the amount of compensation
28 which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial
proceedings.

(Code Civ. Proc., § 526, subd. (a).)

175. The EIR acknowledges that the Section will have unmitigated significant adverse

1 environmental effects in the Section area.

2 176. Unless restrained by this Court *pendent lite*, Respondents threaten to commence
3 construction of all or portions of the Section and thereby irrevocably alter the physical environment in
4 the project area, causing permanent and irreparable harm to sensitive environmental resources and
5 irreparable harm to the public health, safety and welfare, without adequate consideration of potential
6 harm to the environment of the project area as required by CEQA. No monetary damages or other legal
7 remedy could compensate Petitioner, its residents and visitors, or the public at large for the harm
8 threatened by Respondents.

9 177. Therefore, Petitioner requests that this Court issue its decree and order enjoining and
10 restraining Respondents, and all of their officers, employees, agents, representatives and all other
11 persons acting by, through, on behalf of or in concert with them, and any of them, from taking any
12 action in furtherance of or in reliance on the Authority's certification of the EIR and/or adoption of the
13 Section Approvals which could alter or affect in any manner the existing physical environment in the
14 project area.

15 178. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law. No
16 money damages or other legal remedy could adequately compensate Petitioner for the irreparable harm
17 described in the preceding paragraphs.

18 **PRAYER FOR RELIEF**

19 In each of the respects enumerated above, Respondents have violated its duties under law, abused
20 their discretion, failed to proceed in the manner required by law, and decided the matters complained of
21 without the support of substantial evidence. Accordingly, the certification of the EIR and the approval
22 of the Section must be set aside.

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1 WHEREFORE, Petitioner prays for relief as follows:

2 1. That the Court issue a peremptory writ of mandate, commanding Respondents:

3 A. To set aside and vacate certification of the EIR, Findings and Statement of
4 Overriding Considerations, and Mitigation Monitoring and Reporting Program supporting the Section;

5 B. To set aside and vacate any approvals for the Section based upon the EIR and
6 Findings and Statement of Overriding Considerations supporting the Section; and

7 C. To prepare and certify a legally adequate EIR for the Section so that Respondents
8 will have a complete disclosure document before them, identify for the decision-makers and public the
9 potential significant impacts of the Section, and enable them to formulate realistic and feasible
10 alternatives and mitigation measures to avoid those impacts;

11 2. That the Court determine and declare: (1) that Respondents violated CEQA, Proposition
12 1A, anti-discrimination law, and the Williamson Act in connection with the Section Approvals; (2) that
13 the Section Approvals were given in violation of these laws; and (3) that the Section Approvals are void;

14 3. That the Court determine and declare that the Final EIR for the Section is inadequate as a
15 matter of law;

16 4. That the Court determine and declare that the CEQA Findings and Statement of
17 Overriding Considerations are inadequate and not supported by substantial evidence and, as such, are
18 void;

19 5. That the Court issue a preliminary and/or permanent injunction enjoining Respondents
20 and all other persons acting by, through or on behalf of them, from engaging in any activity, any
21 procurement of equipment, materials or supplies, or any irretrievable commitment of resources in
22 connection with implementing the Section and the ICS that would result in any change in the physical
23 environment of the project area while this Petition is pending, and such other relief as may be sought;

24 6. That the Court issue an order enjoining Respondents and Real Parties in Interest from
25 taking any action to construct any portion of the Section or to develop or alter the Section site in any
26 way that could result in a significant adverse impact on the environment unless and until a lawful
27 approval is obtained from Respondents after the preparation and consideration of an adequate EIR;

28 7. That, upon motion of Petitioner, the Court award and order Respondents to pay


1 Petitioner's reasonable attorneys' fees in connection with this proceeding;

2 8. That the Court order Respondents to pay Petitioner's costs of suit; and

3 9. That the Court order such other and further relief as may be just and proper.

4 DATE: June 5, 2014

5 THERESA A. GOLDNER
County Counsel

6
7 By: 
8 Charles F. Collins, Deputy
9 Attorneys for Petitioner and Plaintiff
10 COUNTY OF KERN
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13 Attorneys for Petitioner and Plaintiff
14 COUNTY OF KERN

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF SACRAMENTO - GORDON D. SCHABER COURTHOUSE

17 COUNTY OF KERN, a subdivision of the
18 State of California,

19 Petitioner and Plaintiff,

20 v.

21 CALIFORNIA HIGH-SPEED RAIL
AUTHORITY, a public agency, and DOES
22 1 through 10, inclusive,

23 Respondents and
24 Defendants.

25 DOES 11 through 50,

26 Real Party in Interest.
27
28

Case No.

NOTICE TO ATTORNEY GENERAL OF
ACTION ALLEGING HARM TO THE
ENVIRONMENT [PUB. RES. CODE §
21167.7; CODE CIV. PROC. § 388]

Ex. A

1 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

2 PLEASE TAKE NOTICE pursuant to Public Resources Code section 21167.7 that
3 or about April 2, 2007, petitioner and plaintiff County of Kern ("Kern County") filed a petition
4 for peremptory writ of mandate and complaint for declaratory and injunctive relief against
5 respondent and defendant California High-Speed Rail Authority ("CHSRA"). The petition
6 seeks, among other things, to compel CHSRA to proceed in the manner required by the
7 California Environmental Quality Act, Public Resources Code section 21000, *et seq.*
8 respect to its approval of the proposed Fresno to Bakersfield Segment of the California high
9 speed rail system project. A true and correct copy of the petition is attached hereto as Exhibit
10 "1" and is incorporated herein by this reference.

11 DATED: June 5, 2014

12 THERESA A. GOLDNER
13 County Counsel

14
15 BY: 

16 CHARLES F. COLLINS
17 Attorneys for Petitioner and Plaintiff
18 COUNTY OF KERN
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13 Attorneys for Petitioner and Plaintiff
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

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21 AUTHORITY, a public agency, and DOES
1 through 10, inclusive,

22 Respondents and
23 Defendants.

24
25 DOES 11 through 50,

26 Real Party in Interest.
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Case No.

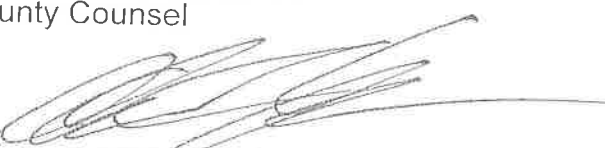
NOTICE OF COMMENCEMENT OF
ACTION [PUB. RES. CODE § 21167.5]

Ex.B

1 TO RESPONDENT CALIFORNIA HIGH-SPEED RAIL AUTHORITY:
2 PLEASE TAKE NOTICE that, pursuant to Public Resources Code section 21167
3 petitioner and plaintiff County of Kern ("Kern County") intends to file a petition for perempt
4 writ of mandate and complaint for declaratory and injunctive relief pursuant to Pub
5 Resources Code section 21167 concerning respondent California High-Speed Rail Authority
6 ("CHSRA") failure to comply with the California Environmental Quality Act, Public Resource
7 Code section 21000, *et seq.*, with respect to the decision of CHSRA on May 7, 2014, to cert
8 the Final Environmental Impact Report for the Fresno to Bakersfield Segment of the Californ
9 high-speed rail system project.

10 DATED: June 4, 2014

11 THERESA A. GOLDNER
12 County Counsel

13
14 BY: 
15 CHARLES F. COLLINS
16 Attorneys for Petitioner and Plaintiff
17 COUNTY OF KERN
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EXEMPT FROM FE
[GOV. CODE § 610]

1 THERESA A. GOLDNER (SBN 107344)
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14 COUNTY OF KERN

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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AUTHORITY, a public agency, and DOES
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23 Respondents and
24 Defendants.

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Case No.

**NOTICE OF ELECTION TO PREPARE
RECORD OF PROCEEDINGS [PUB.
RES. CODE § 21167.6(b)(2)]**

Ex.C.

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TO RESPONDENT CALIFORNIA HIGH-SPEED RAIL AUTHORITY:

PLEASE TAKE NOTICE that, pursuant to Public Resources Code section 21167.6(b)(2), petitioner and plaintiff County of Kern ("Kern County") hereby elects to prepare the record of the administrative proceedings relating to the decision of respondent California High-Speed Rail Authority on May 7, 2014, to certify the Final Environmental Impact Report for the proposed Fresno to Bakersfield Segment of the California high-speed rail system project.

DATED: June 5, 2014

THERESA A. GOLDNER
County Counsel

BY: 
CHARLES F. COLLINS
Attorneys for Petitioner and Plaintiff
COUNTY OF KERN

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action; my business address is 1115 Truxtun Avenue, Fourth Floor, Bakersfield, CA 93301.

On the date last written below, I served the attached **NOTICE TO ATTORNEY GENERAL OF ACTION ALLEGING HARM TO THE ENVIRONMENT [PUB. RES. CODE § 21167.7; CODE CIV. PROC. § 388]** on the party(ies) listed below, through their attorneys of record, if any, by facsimile transmission, by personal delivery or by placing true copies/originals thereof in sealed envelope(s) addressed/designated as shown below.

A. BY MAIL - I enclosed such document in sealed envelope(s) with the name(s) and address(es) of the person(s) served as shown on the envelope(s) and caused such envelope(s) to be deposited in the mail at Bakersfield, California. The envelope(s) was/were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

B. BY OVERNIGHT SERVICE - I caused each such envelope to be delivered by overnight service to the addressee(s) noted below.

C. BY FACSIMILE SERVICE - I placed such document in a facsimile machine (pursuant to California Rules of Court, Rule 2.301(3)) with the fax number of (661) 868-3805. Upon facsimile transmission of the document, I obtained a report from the transmitting facsimile machine stating that the facsimile transmission was complete and without error. A copy of the transmission report is attached to this Proof of Service pursuant to California Rules of Court, Rule 2.306(g).

D. BY PERSONAL SERVICE - I caused such envelope(s) to be delivered by hand to the addressee(s) listed below.

TYPE OF SERVICE

A

ADDRESSEE

OFFICE OF THE ATTORNEY GENERAL
1300 "I" STREET
SACRAMENTO, CA 95814-2919

FAX NO.

X

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **June 6, 2014**, at Bakersfield, California.



Yvonne Salazar

EXHIBIT B

EXEMPT FROM FEES
[GOV. CODE § 6103]

1 THERESA A. GOLDNER (SBN 107344)
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2 CHARLES F. COLLINS (SBN 104318)
Deputy County Counsel
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13 Attorneys for Petitioner and Plaintiff
14 COUNTY OF KERN

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SACRAMENTO - GORDON D. SCHABER COURTHOUSE**

17 COUNTY OF KERN, a subdivision of the
18 State of California,

19 Petitioner and Plaintiff,

20 v.

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AUTHORITY, a public agency, and DOES
22 1 through 10, inclusive,

23 Respondents and
24 Defendants.

25 DOES 11 through 50,

26 Real Party in Interest.

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Case No.

**NOTICE OF COMMENCEMENT OF
ACTION [PUB. RES. CODE § 21167.5]**

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TO RESPONDENT CALIFORNIA HIGH-SPEED RAIL AUTHORITY:

PLEASE TAKE NOTICE that, pursuant to Public Resources Code section 21167.5, petitioner and plaintiff County of Kern ("Kern County") intends to file a petition for peremptory writ of mandate and complaint for declaratory and injunctive relief pursuant to Public Resources Code section 21167 concerning respondent California High-Speed Rail Authority's ("CHSRA") failure to comply with the California Environmental Quality Act, Public Resources Code section 21000, *et seq.*, with respect to the decision of CHSRA on May 7, 2014, to certify the Final Environmental Impact Report for the Fresno to Bakersfield Segment of the California high-speed rail system project.

DATED: June 4, 2014

THERESA A. GOLDNER
County Counsel

BY: 

CHARLES F. COLLINS
Attorneys for Petitioner and Plaintiff
COUNTY OF KERN

EXHIBIT C

EXEMPT FROM FEES
[GOV. CODE § 6103]

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14 COUNTY OF KERN

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Case No.

**NOTICE OF ELECTION TO PREPARE
RECORD OF PROCEEDINGS [PUB.
RES. CODE § 21167.6(b)(2)]**

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TO RESPONDENT CALIFORNIA HIGH-SPEED RAIL AUTHORITY:

PLEASE TAKE NOTICE that, pursuant to Public Resources Code section 21167.6(b)(2), petitioner and plaintiff County of Kern ("Kern County") hereby elects to prepare the record of the administrative proceedings relating to the decision of respondent California High-Speed Rail Authority on May 7, 2014, to certify the Final Environmental Impact Report for the proposed Fresno to Bakersfield Segment of the California high-speed rail system project.

DATED: June 5, 2014

THERESA A. GOLDNER
County Counsel

BY: 

CHARLES F. COLLINS
Attorneys for Petitioner and Plaintiff
COUNTY OF KERN