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GOVERNMENT CODE §6103

7 Attorneys for Plaintiffs
8 JOHN TOS; AARON FUKUDA;
AND COUNTY OF KINGS
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
IN AND FOR THE COUNTY OF SACRAMENTO

11 JOHN TOS, AARON FUKUDA, and COUNTY
12 OF KINGS,
Plaintiffs
13 v.
14 CALIFORNIA HIGH SPEED RAIL
AUTHORITY *et al.*,
15 Defendants

No. 34-2011-00113919 filed 11/14/2011
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31
PLAINTIFFS' REPLY TO DEFENDANTS'
OBJECTIONS TO REQUESTS FOR
JUDICIAL NOTICE

16 Date: February 11, 2016
17 Time: 9:00 AM
18 Dept. 31
19 Judge: Hon. Michael P. Kenny
Trial Date: February 11, 2016

20 Plaintiffs hereby reply to Defendants' objections to Plaintiffs' Request for Judicial Notice
in support of their Motion for Judgment.

21 **I. REQUEST FOR JUDICIAL NOTICE NO. 1.**

22 A. THE FACT FOR WHICH PLAINTIFFS REQUEST JUDICIAL NOTICE WAS
23 PLACED BEFORE CHSRA DURING THE ADMINISTRATIVE PROCESS.

24 Defendants argue that, under *Western States Petroleum Assn. v. Superior Court*
25 ("*WSPA*") (1995) 9 Cal.4th 559, 573 fn.4, the Court may not take judicial notice of the requested
26 fact, as it was not placed before CHSRA during the administrative process. Defendants are
27 wrong. The lack of any additional federal funding for high-speed rail projects was raised by
28 numerous comments on the 2014 Business Plan. (See, e.g., AG 009790 [further federal funding

1 a distant possibility at best], 009873 [no credible sources of funding], 009904 [only \$3.3 b of
2 federal funding available], 010083 [no federal high-speed rail funding included in approved 2014
3 budget, and none contemplated], 010145 [LAO opines that state will likely be the only source to
4 fund shortfall in IOS funding], 010242 [no further federal funding forthcoming], 010355 [no
5 additional federal funds on the horizon].) Thus the requested fact was very much before CHSRA
6 during the administrative process. All that the request for judicial notice does is provide
7 indisputable evidence, in the form of enacted federal legislation, to support that fact.

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B. THE LACK OF FEDERAL FUNDING IS RELEVANT TO THE ISSUES
BEFORE THE COURT.

One of the central issues before the Court is whether CHSRA's determination that its
high-speed rail system, and its current alignment, are financially viable. As Plaintiffs have
argued, a crucial part of that question is whether CHSRA's proposed Initial Operating Segment,
extending from Merced to Burbank, can actually be completed. The Revised 2012 Business Plan
pegged the cost of the IOS-South at roughly \$31 billion. The 2014 Business Plan clung to that
number, in spite of unrebutted evidence showing the cost would increase to roughly \$40 billion.
Yet both Business Plans could point to only \$3.3 billion in committed federal funds.

The highly relevant question is whether the federal government could be expected to
contribute additional funding towards completion of the IOS-South; because as of April 2014,
there were no other funding sources available to fill the deficit in funds needed to complete IOS-
South. The fact that no additional federal high-speed rail funding has been approved between
2011 and 2014 is therefore highly relevant to whether IOS-South can be completed, which in
turn is relevant to whether it can determined to be financially viable.

III. REQUEST FOR JUDICIAL NOTICE NO. 5.

A. THE EVIDENCE FOR WHICH PLAINTIFFS ASK JUDICIAL NOTICE,
CALTRANS' GEOGRAPHIC INFORMATION SYSTEM DATABASE AND
ITS DESIGNATION OF CALIFORNIA URBAN AREAS AS DETERMINED
BY THE UNITED STATES CENSUS BUREAU, WAS BEFORE CHSRA
DURING THE ADMINISTRATIVE PROCESS.

Defendants again object that the Caltrans Geographic Information System ("GIS")
database is not properly subject to judicial notice under *WSPA, supra*, because it was never
placed before CHSRA during the administrative process. Again, Plaintiffs must beg to differ.

To begin with, the GIS database that Caltrans established just placed in database form
information provided to it by the United States Census Bureau, which has defined criteria for
urban areas and designated the areas within the United States that meet those criteria. All

1 Caltrans did was to take the information from the Census Bureau and integrate it with its existing
2 mapping of California and its transportation infrastructure to create a unified database.

3 The results were displayed in multiple maps that CHSRA used for its environmental
4 review of its high-speed rail project (see, e.g., H7.000040, 000041[maps of northern and
5 southern portions of high-speed rail system, indicating major highways and urban areas],
6 H7.011893, 011897, 011917 [maps of Bay Area to Central Valley area, including urban areas
7 and major highways]), as well as maps used in discussion of its overall planning process. (E.g.,
8 AG008944 [high-speed rail system statewide overview map], AG 02236 [PowerPoint slide from
9 Fresno Industry Forum public presentation].) While the maps themselves may not have included
10 the full level of detail available in the actual database, the information was the same, and was
11 clearly placed before CHSRA multiple times.

12 **B. THE URBAN AREA MAPPING DATA IS HIGHLY RELEVANT TO THE**
13 **TRAVEL TIME ISSUE IN THE CASE.**

14 Defendants also claim the mapping of urban areas is irrelevant to any issue in the case.
15 Yet Defendants acknowledge that CHSRA had committed to slower speeds for its trains in at
16 least some urban areas. Knowing the length of track contained in those urban areas is highly
17 relevant to determining nonstop service travel times, and whether they satisfied the requirements
18 of §2704.09.

19 **C. WHILE CALTRANS' BROWSER PLUG-IN TO INTEGRATE ITS GIS**
20 **DATABASE INTO GOOGLE MAPS MAY HAVE BEEN TEMPORARILY**
21 **RETIRED, THE CALTRANS DATABASE REMAINS A RELIABLE SOURCE**
22 **OF FACTUAL INFORMATION, AND THE SUBMITTED EVIDENCE**
23 **SUFFICES TO ALLOW THE COURT TO TAKE JUDICIAL NOTICE OF THE**
24 **DATABASE.**

25 It is unclear if Defendants are questioning the accuracy or validity of the Caltrans GIS
26 database. Plaintiffs submit that, when it comes to geographic information on California's
27 transportation infrastructure and its location relative to urban areas, the Caltrans GIS database,
28 and the census data contained in it, is a source of reasonably indisputable accuracy, and therefore
29 subject to judicial notice under Evidence Code §452(h).¹

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31 ¹ It is surprising that Defendants appear to question to accuracy and reliability of an
32 informational database prepared by the California State Transportation Agency, the same agency
33 that includes CHSRA.

1 As for the internet web browser plug-in that integrates the Caltrans GIS database into
2 Google Earth, its retirement (presumably due to license fee or software compatibility issues) is
3 certainly unfortunate, but does not affect the accuracy of the Caltrans database, only the ease by
4 which it can be accessed by the general public.

5 As for Defendants' complaint that the accuracy of the location of urban areas is not
6 subject to judicial notice, this information, while mapped by Caltrans, was compiled and
7 prepared by the U.S. Census bureau as part of its official duties. It is appropriate for a court to
8 take judicial notice of data that are part of the U.S. Census. (*Moehring v. Thomas* (2005) 126
9 Cal.App.4th 1515, 1523 fn.4.) Such data is presumed accurate.

10 D. ANY INACCURACY IN THE MEASUREMENTS MADE USING THE
11 CALTRANS PLUG-IN TO GOOGLE EARTH WOULD ONLY WORK TO
12 DEFENDANTS' BENEFIT.

13 Finally, Defendants question the accuracy of the measurements of distances made using
14 the Caltrans plug-in and database for Google Earth. Plaintiffs acknowledge that the distances
15 measured are not necessarily the same as those that might be measured along CHSRA's actual
16 alignment, which data was not readily available to Plaintiffs. Rather, they represent the shortest
17 straight-line distance between where the alignment enters the urban area and where it leaves it.
18 As such, they underestimate the actual distance along the alignment and the time it would take to
19 traverse that distance. However, any such inaccuracy would only work to Defendants' benefit in
20 decreasing the travel time involved. Certainly, Defendants can have no cause to complain about
21 being given the benefit of the doubt.

22 Dated: February 5, 2016

23 Respectfully Submitted,

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25 Stuart M. Flashman

26 Attorney for Plaintiffs John Tos et al.