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FILED/ENDORSED
MAR - 4 2016
S. Lee
By S. Lee, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

**JOHN TOS, AARON FUKUDA, and
COUNTY OF KINGS,**

Plaintiffs and Petitioners,

v.

**CALIFORNIA HIGH SPEED RAIL
AUTHORITY *et al.*,**

Defendants and Respondents.

Case No. 34-2011-00113919-CU-WM-GDS

**RULING ON SUBMITTED MATTER:
MOTION FOR JUDGMENT ON
PETITION AND COMPLAINT**

I. Factual And Procedural Background

The Legislature enacted the California High-Speed Rail Act in 1996. (Pub. Util. Code, § 185000, et seq)(hereinafter, the “Rail Act.”) The Rail Act created the High-Speed Rail Authority (hereinafter, the “Authority”) (Pub. Util. Code § 185012) and tasked it with developing and implementing an intercity high-speed rail service (hereinafter, the “HSR system”). (Pub. Util. Code §§ 185030, 185032.)

In 2008, Proposition 1A was placed before California voters to enact the “Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.” The Official Voter Information Guide for November 4, 2008 summarized the decision whether to enact Proposition 1A as,

“[t]o provide Californians a safe, convenient, affordable, and reliable alternative to driving and high gas prices; to provide good-paying jobs and

1 improve California's economy while reducing air pollution, global warming
2 greenhouse gases, and our dependence on foreign oil, *shall \$9.95 billion in*
3 *bonds be issued* to establish a clean, efficient high-speed train service linking
4 Southern California, the Sacramento/San Joaquin Valley, and the San
5 Francisco Bay Area, with at least 90 percent of bond funds spent for specific
6 projects, with private and public matching funds required, including, but not
7 limited to, federal funds, funds from revenue bonds, and local funds, and all
8 bond funds subject to independent audits?" (AG 000003)(emphasis added.)

9 The Official Voter Information Guide further indicated that a "yes" vote meant "[t]he
10 state could sell \$9.95 billion in general obligation bonds, to plan and to partially fund the
11 construction of a high-speed train system in California, and to make capital improvements to state
12 and local rail services." A "no" vote meant "[t]he state could not sell \$9.95 billion in general
13 obligation bonds for these purposes." (AG 000003.) The description of Proposition 1A and
14 arguments for and against it, were followed by "an Overview of State Bond Debt." (AG 000008-
15 9.)

16 California voters approved Proposition 1A (hereinafter, The "Bond Act"). (Streets and
17 Highways Code §§ 2704, *et seq.*¹) The Bond Act is in Division 3 of the Streets and Highways
18 Code, which Division concerns the "Apportionment and Expenditure of Highway Funds."

19 The Bond Act identifies requirements the HSR system must meet prior to receipt of the
20 funds, including that the HSR system "shall be designed to achieve the following
21 characteristics...

22 (b) Maximum nonstop service travel times for each corridor that shall not
23 exceed the following:

- 24 (1) San Francisco-Los Angeles Union Station: two hours, 40
25 minutes.
- 26 (2) Oakland-Los Angeles Union Station: two hours, 40 minutes.
- 27 (3) San Francisco-San Jose: 30 minutes...

28 (c) Achievable operating headway (time between successive trains) shall be
five minutes or less...

¹ All further statutory references are to the Streets and Highways Code, unless otherwise indicated.

1
2 (g) In order to reduce impacts on communities and the environment, the
3 alignment for the high-speed train system shall follow existing transportation
4 or utility corridors to the extent feasible and shall be financially viable, as
5 determined by the authority.” (§ 2704.09.)

6 The Authority must prepare, publish, adopt, and submit to the Legislature, a business plan,
7 which they must review and resubmit every two years. (Pub. Util. Code § 185033.) Before
8 committing appropriated bond funds to construction, the Authority must approve and submit a
9 detailed funding plan concerning the specific corridor or usable segment, to the Director of
10 Finance, the peer review group established pursuant to section 185035 of the Public Utilities
11 Code, and the policy committees with jurisdiction over transportation matters and the fiscal
12 committees in both houses of the legislature. (§ 2704.08.) The funding plan must certify that the
13 Authority has completed all necessary project level environmental clearances necessary to
14 proceed to construction. (§ 2704.08, subd. (c)(2)(k).) The Authority cannot commit bond funds to
15 construction until the Director of Finance concludes that “the plan is likely to be successfully
16 implemented as proposed.” (§ 2704.08, subd. (d).)

17 In April 2012 and April 2014, the Authority approved, published, and submitted its 2012
18 and 2014 Business Plans to the Legislature. (AG 001931, AG 011047.) These plans indicate that
19 Phase I of the system is a “blended system” in which conventional and HSR trains will share
20 tracks, stations, and other facilities. (AG 001936, 001940, 001941, 001948, 001971-001974,
21 011055, 011060, 011062.) In 2013, the Legislature passed SB 557 (enacting § 2704.76) which
22 provides,
23

24 “(b) Funds appropriated pursuant to Items 2660-104-6043, 2660-304-6043,
25 and 2665-104-6043 of Section 2.00 of the Budget Act of 2012, to the extent
26 those funds are allocated to projects in the San Francisco to San Jose segment,
27 shall be used solely to implement a rail system in that segment that *primarily*
28 *consists of a two-track blended system* to be used jointly by high-speed rail
trains and Peninsula Joint Powers Board commuter trains (Caltrain), with the
system to be contained substantially within the existing Caltrain right-of-
way.” (emphasis added.)

1
2 Consequently, the funds appropriated for the San Francisco to San Jose segment are for
3 construction of a blended system.

4 Plaintiffs filed this matter on November 14, 2011, claiming that the high-speed rail
5 project is not eligible to receive Bond Act funds. Accordingly, Plaintiffs allege it would be
6 illegal to give Defendants these funds to construct the subject high-speed rail system in the
7 Central Valley.

8 One of Plaintiffs' initially filed claims was previously resolved in this matter via separate
9 trial and appeal to the Third District Court of Appeal. (*California High-Speed Rail Authority v.*
10 *Superior Court* (2014) 228 Cal.App.4th 676.) The Court of Appeal directed this Court to enter
11 judgment, "validating the authorization of the bond issuance...Further challenges by real parties
12 in interest to the use of bond proceeds are premature." The court also ordered this Court to vacate
13 its ruling requiring the Authority to redo the preliminary section 2704.08, subdivision (c) funding
14 plan after the Legislature appropriated the bond funds. (*Id.* at 684.) In ruling on that matter, the
15 Court of Appeal noted, "[j]udicial intrusion into legislative appropriations risks violating the
16 separation of powers doctrine." (*Id.* at 714.) With regard to Proposition 1A, the court found, "the
17 Bond Act does not curtail the exercise of the Legislature's plenary authority to appropriate."
18

19
20 The remaining claims in this matter are, per letter stipulation dated January 8, 2014:

- 21
- 22 1. "The currently proposed high-speed rail system does not comply with the
23 requirements of Streets and Highways Code § 2704.09 in that it cannot meet
24 the statutory requirement that the high-speed train system to [sic] be
25 constructed so that the maximum nonstop service travel time for San
26 Francisco – Los Angeles Union Station shall not exceed 2 hours and 40
27 minutes;
 - 28 2. The currently proposed high-speed rail system does not comply with the
requirements of Streets and Highways Code § 2704.09 in that it will not be
financially viable as determined by the Authority and the requirement under §
2704.08(c)(2)(J) that the planned passenger service by the Authority in the
corridors or usable segments thereof will not require a local, state, or federal
operating subsidy;
 3. The currently proposed "blended rail" system is substantially different from

1 the system whose required characteristics were described in Proposition 1A,
2 and the legislative appropriation towards constructing this system is therefore
3 an attempt to modify the terms of that ballot measure in violation of article
4 XVI, section 1 of the California Constitution and therefore must be declared
5 invalid;

- 6 4. If Plaintiffs are successful in any of the above three claims, Proposition 1A
7 bond funds will be unavailable to construct any portion of the Authority's
8 currently-proposed high-speed rail system. Under those circumstances, the
9 \$3.3 billion of federal grant funds will not allow construction of a useful
10 project. Therefore, under those circumstances the Authority's expenditure of
11 any portion of the \$3.3 billion of federal grant funds towards the construction
12 of the currently-proposed system would be a wasteful use of public funds and
13 would therefore be subject to being enjoined under Code of Civil Procedure §
14 526a."

15 The parties briefed these issues and then presented oral argument on February 11, 2015.

16 At the close of the hearing, the Court took the matter under submission.

17 **II. Standard of Review**

18 This case involves numerous claims concerning the compliance of the HSR system as
19 currently proposed with the requirements of the Bond Act.

20 The interpretation of statutes in such a case is an issue of law on which the court exercises
21 its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In
22 exercising its independent judgment, the Court is guided by certain established principles of
23 statutory construction, which may be summarized as follows.

24 The primary task of the court in interpreting a statute is to ascertain and effectuate the
25 intent of the Legislature. (See, *Hsu v. Abbata* (1995) 9 Cal.4th 863, 871.) As this matter
26 involves the interpretation of statutes approved by the voters, "ascertaining the will of the
27 electorate is paramount." (*Cal. High-Speed Rail Authority*, 228 Cal.App.4th at 708.) "Statutes
28 adopted by the voters must be construed liberally in favor of the people's right to exercise their
reserved powers, and it is the duty of the courts to jealously guard the right of the people by
resolving doubts in favor of the use of those reserved powers." (*Id.*)

However, whether a statute is enacted by the voters or passed by the Legislature, the same

1 basic rules of statutory construction apply. (*Id.*) The starting point for the task of interpretation is
2 the wording of the statute itself, because these words generally provide the most reliable indicator
3 of legislative, or elector, intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th
4 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual,
5 ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See,
6 *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of
7 a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno*
8 *v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some
9 operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)
10

11 Beyond that, the Court must consider particular statutory language in the context of the
12 entire statutory scheme in which it appears, construing words in context, keeping in mind the
13 nature and obvious purpose of the statute where the language appears, and harmonizing the
14 various parts of the statutory enactment by considering particular clauses or sections in the
15 context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)
16

17 To the extent this matter requires review of administrative actions taken by the Authority,
18 the Court must determine whether those actions constitute an abuse of discretion, namely whether
19 the action was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or
20 procedurally unfair. (See *Khan v. Los Angeles City Employees' Retirement System* (2010) 187
21 Cal.App.4th 98, 105-06.)
22

23 **III. Discussion**

24 **A. Requests for Judicial Notice**

25 Plaintiffs have filed a request for judicial notice concerning five documents. Defendants
26 have filed objections to items 1 and 5.

27 Item 1 requests the Court take judicial notice of the fact that, "beginning in 2011,
28

1 Congressional appropriations have provided no funding for the California High-Speed Rail
2 Authority or its project, or any other high-speed rail project, and in fact have rescinded prior
3 funding for high-speed rail projects.” Defendants object on the basis that this is irrelevant to any
4 material issue in this matter, contains evidence that was not before the Authority when it made its
5 decision (pursuant to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559),
6 and that the proffered fact is not the proper subject of judicial notice. The Court agrees, based on
7 its analysis herein, that this fact is not relevant to any material issue currently ripe for review in
8 this matter.
9

10 Item 5 requests judicial notice of mapping by the California Department of Transportation
11 of California urban areas, which mapping has been integrated into a set of online databases
12 accessible through Google Earth. Defendants object on the basis that the maps are irrelevant to
13 any material issue, the evidence was not properly before the Authority, the evidence is proffered
14 to contradict the Authority’s experts, Plaintiffs failed to comply with Rule of Court 3.1306,
15 subdivision (c), and Plaintiffs improperly seek judicial notice of the accuracy of the maps. The
16 Court agrees, based on its analysis herein, that this information is not relevant to any issue that is
17 currently ripe for review.
18

19 The request for judicial notice is **GRANTED** as to items 2, 3, and 4, and **DENIED** as to
20 items 1 and 5.
21

22 **B. The Purpose of the Bond Act**

23 Central to this matter is the answer to the following question: Does the Bond Act simply
24 provide bond financing, conditional upon the satisfaction of certain design criteria, or does it
25 reach further, providing the sole authority by which a high-speed rail system may be constructed
26 by the Authority (regardless of the source of funding)? Plaintiffs urge this Court to read section
27 2704.04, subdivision (a) as a declaration of the Legislature’s intent that any HSR system built in
28

1 California must comply with the Bond Act's pre-requisites. Defendants argue, instead, that the
2 Bond Act only prohibits the use of Bond Act funds until the Authority has proven compliance
3 with the system described therein. Consequently, Defendants contend, to the extent the Authority
4 is moving forward with an HSR system utilizing non-Bond Act funds, there is no statutory
5 prohibition to these actions.
6

7 In analyzing the meaning of the Bond Act, the Court looks first to the plain language of
8 the relevant statutes. Section 2704.04, subdivision (a) provides,

9 "It is the intent of the Legislature by enacting this chapter and of the people of
10 California by approving the bond measure pursuant to this chapter to initiate
11 the construction of a high-speed train system that connects the San Francisco
12 Transbay Terminal to Los Angeles Union Station and Anaheim, and links the
13 state's major population centers, including Sacramento, the San Francisco Bay
14 Area, the Central Valley, Los Angeles, the Inland Empire, Orange County,
15 and San Diego consistent with the authority's certified environmental impact
16 reports of November 2005 and July 9, 2008."

17 Section 2704.04 is located within Streets and Highways Code Division 3,
18 "Apportionment and Expenditure of Highway Funds," Chapter 20, "Safe, Reliable High-Speed
19 Passenger Train Bond Act for the 21st Century," Article 2, "High-Speed Passenger Train
20 Financing Program." Section 2704.04 is titled, "Legislative intent; Use of net proceeds from sale
21 of bonds." All of these titles indicate that the Bond Act, including section 2704.04, addresses the
22 *use of funds* to construct a HSR system.
23

24 Such an interpretation is supported by the information provided to the voters to assist in
25 determining whether to vote "yes" or "no" on Proposition 1A. The summary in the voter
26 information guide indicated that the voters needed to decide, "...shall \$9.95 billion in bonds be
27 issued to establish a clean, efficient high-speed train service linking Southern California, the
28 Sacramento/San Joaquin Valley, and the San Francisco Bay Area..." (AG 000003)(emphasis
added.) The descriptions of what a "yes" or "no" vote would mean indicate that the result of the
vote would determine whether the state could sell \$9.95 billion in general obligation bonds in

1 order to construct an HSR system. (*Id.*) There is no discussion that a “yes” vote on Proposition
2 1A prohibits the Legislature from utilizing its appropriation powers to construct an HSR system
3 using funds other than the \$9.95 billion in general obligation bonds.

4 As the Court of Appeal held in the prior trial on this matter, “[j]udicial intrusion into
5 legislative appropriations risks violating the separation of powers doctrine.” (*Cal. High-Speed*
6 *Rail Authority*, 228 Cal.App.4th at 714.) “If there is any doubt as to the Legislature’s power to
7 act in any given case, the doubt should be resolved in favor of the Legislature’s action.” (*Id.*) The
8 Court of Appeal further noted, “the only judicial standard commensurate with the separation of
9 powers doctrine is one of strict construction to ensure that restrictions on the Legislature are in
10 fact imposed by the people rather than by the courts in the guise of interpretation.” (*Id.*)(citing
11 *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1218.) With regard to
12 Proposition 1A, the court read the plain language of the statute and found, “the Bond Act does
13 not curtail the exercise of the Legislature’s plenary authority to appropriate.”²

14 There is nothing in the Bond Act or in the voter information guide that dictates the
15 Legislature cannot use non-Bond Act funds to construct or plan an HSR system absent a showing
16 that the system complies with the Bond Act requirements. The Bond Act did not establish the
17 Authority, the Rail Act did. The Bond Act is, consequently, not the source of the Authority’s
18 responsibilities or “powers,” which are described in the Rail Act, via Public Utilities Code
19 section 185034. The Bond Act is simply that: a Bond Act. The Authority may not spend any of
20 the \$9.95 billion in general obligation bonds absent a showing of compliance with the numerous
21 requirements described in the Bond Act. Additionally, all parties agree that Bond Act proceeds
22 have not been used in the challenged segments and are not currently at issue, as the Authority has
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27 ² While this ruling concerned whether the Legislature was prohibited from appropriating funds in the absence of a
28 preliminary funding plan, the absence of a clear directive to abdicate appropriation power with regard to non-bond
sources leads to the same conclusion here.

1 not prepared the required funding plans pursuant to section 2704.08. (Opening Brief, p. 3.)

2 The Court finds that the Bond Act describes criteria that must be met in order to finance
3 an HSR system with Bond Act funds. The Bond Act does not set “restrictions on what type of
4 system [the Authority] could construct regardless of its funding source.” (Opening Brief, p. 1.)

5
6 It is with this determination in mind that the Court now turns to Plaintiffs’ challenges to
7 the HSR system as currently proposed.

8 C. The Blended System

9 i. *2005 and 2008 EIRs*

10 Plaintiffs argue the proposed “blended system” is not consistent with the Bond Act
11 because it fails to comply with the Authority’s certified Environmental Impact Reports of
12 November 2005 and July 9, 2008, as required by section 2704.04, subdivision (a).³ Because the
13 Legislature has mandated the blended system via SB 557 (enacting § 2704.76), neither party
14 argues that this issue is not ripe for review. Accordingly, the Court considers whether the
15 statutorily mandated blended system violates the Bond Act as approved by the voters.
16

17 Section 2704.04, subdivision (a) provides,

18 “It is the intent of the Legislature by enacting this chapter and of the people of
19 California by approving the bond measure pursuant to this chapter to initiate
20 the construction of a high-speed train system that connects the San Francisco
21 Transbay Terminal to Los Angeles Union Station and Anaheim, and links the
22 state’s major population centers, including Sacramento, the San Francisco Bay
23 Area, the Central Valley, Los Angeles, the Inland Empire, Orange County,
24 and San Diego *consistent with the authority’s certified environmental impact
25 reports of November 2005 and July 9, 2008.*” (emphasis added.)

26
27 This section, Plaintiffs argue, evidences the Legislature and voters’ intent and
28 expectations that the HSR system will be consistent with the 2005 and 2008 EIRs. The 2005 EIR
includes cross-sections for the “Caltrain Shared-Use Alignment” showing four tracks throughout

³ Defendants maintain Plaintiffs may not argue that the blended system fails to comply because this claim is not squarely within the January 8, 2014 stipulated issues. The Court disagrees and finds that number 3 may be interpreted broadly to allow for Plaintiffs’ arguments that the blended system cannot comply with the Bond Act.

1 the San Francisco to San Jose segment. (H7.011060-H7.011074.) The 2008 EIR includes a set of
2 typical cross sections for the San Francisco to San Jose segment, again showing four tracks.
3 (H7.013158 – H7.013175.) The 2008 EIR further provides that “[t]he Draft Program EIR.EIS
4 analyzes one alignment option between San Francisco and San Jose along the San Francisco
5 Peninsula that would utilize the Caltrain rail right-of-way, and share tracks with express Caltrain
6 commuter rail services... The alignment between San Francisco and San Jose *is assumed to have*
7 *4-tracks*, with the two middle tracks being shared by Caltrain and HST and the outer tracks used
8 by Caltrain...” (H7.014212)(emphasis added.)

10 However, in 2012, the Authority modified the 2005 and 2008 EIRs via the 2012 Bay Area
11 to Central Valley Partially Revised Final Program EIR. An initial blended system (two-tracks
12 shared by Caltrain and HSR trains) in the San Francisco Peninsula is discussed at length in this
13 2012 EIR. (H7.018234-35, H7.018239-40.) The issue before the Court is whether section
14 2704.04, subdivision (a) requires the four-track alignment discussed in the 2005 and 2008 EIRs,
15 or whether section 2704.04 must be read in conjunction with section 2704.06 to allow for project
16 modification via subsequently modified environmental studies.

18 Section 2704.06 is titled, “Availability of proceeds for planning and capital costs,” and
19 provides,

21 “The net proceeds received from the sale of nine billion dollars
22 (\$9,000,000,000) principal amount of bonds authorized pursuant to this
23 chapter, upon appropriation by the Legislature in the annual Budget Act, shall
24 be available, and subject to those conditions and criteria that the Legislature
25 may provide by statute, for (a) planning the high-speed train system and (b)
26 capital costs set forth in subdivision (c) of Section 2704.04, consistent with
27 the authority's certified environmental impact reports of November 2005 and
28 July 9, 2008, *as subsequently modified pursuant to environmental studies
conducted by the authority.*” (emphasis added.)

26 Defendants argue section 2704.04, subdivision (a) must be read in conjunction with
27 2704.06 in order to give meaning to the words “*as subsequently modified pursuant to*
28 *environmental studies conducted by the authority.*” To hold that the HSR system can only qualify

1 for Bond Act funds if it meets the design proposed by the 2005 and 2008 EIRS would read the
2 modification language out of section 2704.06. Defendants also contend the Legislature has
3 statutory and Constitutional authority to amend the Bond Act to require a blended system.

4 When considering a statutory scheme, the Court should not construe individual statutes in
5 isolation, but instead should view the Act as a whole. (See, *People v. Whaley* (2008) 160
6 Cal.App.4th 779, 793.) The court should give meaning to every word of a statute if possible,
7 avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18
8 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect.
9 (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

10
11 Plaintiffs argued at length during oral argument that section 2704.06 refers only to the
12 receipt of bond funds, while section 2704.04 provides the general legislative intent that the HSR
13 system comply with the 2005 and 2008 EIRs. Because the schematics included in the 2005 and
14 2008 EIRs refer only to four-track systems, Plaintiffs argue, a two-track blended system violates
15 the general Legislative intent limiting any HSR system the Authority completes. This argument is
16 contrary to the Court's finding above that the Bond Act concerns itself solely with the use of
17 Bond Act funds. As sections 2704.04 and 2704.06 must be read in the context of the use of Bond
18 Act funds, they must be read together, giving meaning to every word.

19
20 Section 2704.06 allows expenditure of Bond Act funds on a system that is "consistent
21 with the authority's certified environmental impact reports of November 2005 and July 9, 2008,
22 as subsequently modified pursuant to environmental studies conducted by the authority." To read
23 section 2704.04 as urged by Plaintiffs means that Bond Act funds *cannot* be expended on a
24 system that complies with a modified EIR if it is not consistent with the 2005 and 2008 EIRs.
25 Essentially, Plaintiffs ask this Court to read the words "as subsequently modified pursuant to
26 environmental studies conducted by the authority" out of the Bond Act. Such a reading is
27
28

1 contrary to the direction that the Court should avoid constructions that render any words surplus
2 or a nullity.

3 Reading section 2704.04 and 2704.06 together, the Court finds that the Authority may use
4 Bond Act funds to construct an HSR system that is compliant with the 2005 and 2008 EIRs, as
5 subsequently modified. As the 2012 Bay Area to Central Valley Partially Revised Final Program
6 EIR modified the subject EIRs to provide for a two-track blended system, in conformance with
7 the provision of section 2704.06, the requirement of a blended system via SB 557 does not violate
8 the Bond Act.
9

10 ii. *Minimum headway requirement and trip-time between San Francisco and*
11 *San Jose*

12 Defendants argue Plaintiffs' claims concerning the blended system headway and trip-time
13 requirements are not ripe. The Court will consider both claims together.
14

15 Plaintiffs contend the blended system violates the Bond Act because it cannot meet the
16 system requirements for operating headways. Section 2704.09, subdivision (c) provides, that the
17 "[t]he high-speed train system to be constructed pursuant to this chapter shall be designed to
18 achieve the following characteristics... Achievable operating headway (time between successive
19 trains) shall be five minutes or less." Plaintiffs argue the blended system can only accommodate a
20 maximum of ten trains per hour, four of which would be HSR trains. (AG 013028, 013074.)
21 Accordingly, there is a fifteen-minute delay between HSR trains on the blended system, in
22 violation of section 2704.09, subdivision (c).
23

24 Defendants argue that this, and the remainder of Plaintiffs' arguments are not yet ripe, as
25 the system design Plaintiffs challenge, "today is not final, but continues to evolve and change"
26 making the claims not reviewable. (Opposition, p. 13.) Defendants further contend, "[w]hen the
27 Authority commits bond funds to a specific plan pursuant to section 2704.08, subdivision (d), the
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1 validity of those expenditures will be reviewable.” (*Id.*) Defendants argue, “[t]he only final design
2 decisions the Authority has made involve the Merced-Fresno and Fresno-Bakersfield segments of
3 the system, which Plaintiffs do not challenge.” (*Id.* at p. 15, FN 11.)

4 The evidence before the Court indicates that the blended HSR system, as currently
5 proposed, can accommodate ten trains in an hour. This allows for one train approximately every
6 six minutes, with a delay between HSR trains of approximately fifteen minutes. (AG 013028,
7 013074.) Plaintiffs argue this demonstrates that the Authority cannot currently prove the blended
8 HSR system complies with Section 2704.09, subdivision (c)’s headway requirement. Defendants
9 contend that these claims are premature, and, that if they are ripe, the definition of “train”
10 includes non-HSR trains, and with imminent technology, the system will be able to improve its
11 six-minute headway to the required five-minute headway. Consequently, Defendants argue the
12 system is “designed to achieve” five minute or less operating headway between trains, even
13 though these trains are not all HSR trains.

14 With regard to operating time between San Francisco and San Jose, section 2704.09,
15 subdivision (b)(3) requires the system to be designed to achieve maximum nonstop service travel
16 time that shall not exceed thirty minutes. In January 2013, the Authority’s consultants performed
17 a simulation analysis to determine whether the blended system could currently comply with this
18 requirement. (AG 022899.) Using a travel speed of 110 mph, the memorandum concluded the
19 nonstop travel time would be 32 minutes. Using a speed of 125 mph, the travel time could be
20 reduced to 30 minutes. Via a revised February 7, 2013 memorandum, the Authority’s consultants
21 concluded that, using a travel time of 110 mph the nonstop travel time would be 30 minutes. (AG
22 022912.) There is no clear explanation for this change in conclusions, other than an email
23 exchange requesting that the consultants disregard the 125 mph proposal. (AG 022909.)

24 On February 11, 2013, this 30-minute travel time at 110 mph was presented to the
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1 Authority via a memorandum. The memorandum indicated that “[f]urther improvements may be
2 achievable through improved train performance, use of tilt technology, more aggressive
3 alignments and higher maximum speeds.” (AG 017435.)

4 Most troubling about this study is the fact that the Authority relied on a 4th and King
5 Caltrain Station as the location in San Francisco from which the travel time should be calculated.
6 (AG 013030, AG 022903, AG 013038.) The Authority acknowledged this fact during oral
7 argument on this matter, and argued that section 2704.09, subdivisions (b)(1) and (3) do not
8 require a specific San Francisco terminal, only requiring that the calculations be between “San
9 Francisco” and the indicated destination. Plaintiffs argue the Bond Act requires the trip to start at
10 the San Francisco Transbay Terminal, a location that is 1.3 miles further north, thus extending the
11 time it will take a train to complete the required distance.
12

13
14 Section 2704.04, subdivision (b)(2) provides that “Phase 1 of the high-speed train project
15 is the corridor of the high-speed train system between San Francisco Transbay Terminal and Los
16 Angeles Union Station and Anaheim.” Subdivision (b)(3) identifies specific high-speed train
17 corridors, and lists, “(B) San Francisco Transbay Terminal to San Jose to Fresno.” Subdivision (a)
18 identifies that the purpose behind the Bond Act is “construction of a high-speed train system that
19 connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim...”
20 Consequently, it appears that the intent of the Bond Act was for the system to extend, in San
21 Francisco, to the Transbay Terminal, not stop 1.3 miles short at a 4th and King Caltrain Station.
22 This specific language and indication of intent does not conflict with a general referral to “San
23 Francisco” in section 2704.09 subdivision (b)(1) and (3). It is reasonable to interpret this
24 reference to “San Francisco” as indicating the Transbay Terminal identified as the intended San
25 Francisco location in section 2704.04.
26

27 It appears, at this time, that the Authority does not have sufficient evidence to prove the
28

1 blended system can currently comply with all of the Bond Act requirements, as they have not
2 provided analysis of trip time to the San Francisco Transbay Terminal, and cannot yet achieve
3 five-minute headways (even allowing for the definition of “train” to include non-HSR trains).
4 However, as Plaintiffs acknowledged during oral argument, the Authority *may be able to*
5 accomplish these objectives at some point in the future. This project is an ongoing, dynamic,
6 changing project. As the Court of Appeal noted, “[b]ecause there is no final funding plan and the
7 design of the system remains in flux...we simply cannot determine whether the project will
8 comply with the specific requirements of the Bond Act...” (*California High-Speed Rail*
9 *Authority*, 228 Cal.App.4th at 703.)
10

11 There is no evidence currently before the Court that the blended system *will not* comply
12 with the Bond Act system requirements. Although Plaintiffs have raised compelling questions
13 about potential future compliance, the Authority has not yet submitted a funding plan pursuant to
14 section 2704.08, subdivisions (c) and (d), seeking to expend Bond Act funds. Thus, the issue of
15 the project’s compliance with the Bond Act is not ripe for review. Currently, all that is before the
16 Court is conjecture as to what system the Authority will present in its request for Bond Act funds.
17 This is insufficient for the requested relief.
18

19 D. Plaintiffs’ remaining claims

20 Plaintiffs’ remaining claims include:

- 21
- 22 1. The Authority has not proven that, pursuant to section 2704.09, subdivision (g), the
HSR system will be financially viable.
 - 23 2. The HSR system as proposed cannot meet the San Francisco-Los Angeles travel time
24 required by the Bond Act.

25 For the reasons discussed above, the Court finds these claims are also not ripe for review.
26 As the Court determined first in this ruling, the Bond Act is just that: a bond act providing for
27 bond financing of an HSR system. Until the Authority attempts to utilize Bond Act funds,
28 pursuant to the prerequisites identified in section 2704.08, the financial viability and San

1 Francisco-Los Angeles corridor designs remain in flux. The record provides, for example, that the
2 Authority continues to focus on system trip time and that the analysis will change as the project
3 changes. (AG 017554, AG 017556.)

4 As this Court has previously indicated, the key question at this time is whether the
5 Authority has taken any action that precludes compliance with the Bond Act. Plaintiffs have
6 failed to provide evidence at this time that the Authority has taken such an action. This is because,
7 as of today, there are still too many unknown variables, and in absence of a funding plan, too
8 many assumptions that must be made as to what the Authority's final decisions will be. While
9 Plaintiffs have produced evidence that raises substantial concerns about the currently proposed
10 system's ability to ultimately comply with the Bond Act, the Authority has yet to produce the
11 funding plan that makes those issues ripe for review. Thus, Plaintiffs' claims must be denied.
12

13 **IV. Conclusion**

14
15 Via Proposition 1A, the voters enacted the "Safe, Reliable High-Speed Passenger Train
16 Bond Act for the 21st Century." This Bond Act provided for financing of a high-speed rail system,
17 to be designed and constructed by the High-Speed Rail Authority (established by the 1996 Rail
18 Act). In order to qualify for financing, the Authority must be able to prove the system it proposes
19 can attain certain standards, including performance times, and financial viability. While the
20 blended system does not appear to have been initially considered by the 2005 and 2008 EIRs,
21 section 2704.06 allows for a system that complies with the EIRs, *as modified*. The blended
22 system complies with the 2012 modification, thus complying with the Bond Act requirements.
23

24 As of the date of this ruling, the Authority has not submitted a section 2704.08 funding
25 plan, and consequently has not sought to utilize any Bond Act funds on the challenged system. To
26 the extent non-Bond Act funds are being expended, Plaintiffs have not identified any basis upon
27 which this Court should enjoin the use of said funds. The HSR system is not final, but instead
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continues to evolve and change. As such, the issue of whether the HSR system complies with the Bond Act is not ripe for review.

The Petition and Complaint are **DENIED**.

In accordance with Local Rule 1.06, counsel for Defendants is directed to prepare an order denying the petition and complaint, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to counsel for Plaintiffs for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

DATED: March 4, 2016



Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: March 4, 2016

By: S. LEE
Deputy Clerk

