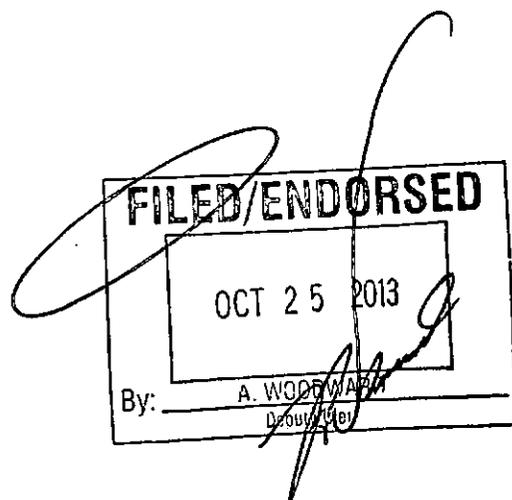


1 RAYMOND L. CARLSON, #138043  
2 LAURA A. WOLFE, #266751  
3 GRISWOLD, LaSALLE, COBB,  
4 DOWD & GIN, L.L.P.  
5 111 EAST SEVENTH STREET  
6 Hanford, California 93230  
7 Telephone: (559) 584-6656  
8 Facsimile: (559) 582-3106

9 Attorneys for: Amicus Curiae  
10 Kings County Water District



EXEMPT FROM FILING FEE  
GOV'T CODE § 6103

11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SACRAMENTO

13 JOHN TOS; AARON FUKUDA; and )  
14 COUNTY OF KINGS, )

15 Plaintiffs, )

16 v. )

17 CALIFORNIA HIGH SPEED )  
18 RAIL AUTHORITY; JEFF MORALES, )  
19 CEO OF THE CHSRA; GOVERNOR )  
20 JERRY BROWN; STATE TREASURER, )  
21 BILL LOCKYER; DIRECTOR OF )  
22 FINANCE, ANA MATASANTOS; )  
23 SECRETARY (ACTING) OF BUSINESS, )  
24 TRANSPORTATION AND HOUSING, )  
25 BRIAN KELLY; STATE CONTROLLER, )  
26 JOHN CHIANG; AND DOES I-V, )  
INCLUSIVE, )

Defendants. )

Case No. 34-2011-00113919

(filed 11/14/2011)

AMICUS CURIAE'S REPLY BRIEF ON  
REMEDIES IN SUPPORT OF PLAINTIFFS

DATE: November 8, 2013  
TIME: 9:00 a.m.  
DEPT: 31  
JUDGE: Hon. Michael P. Kenny

**BY FAX**

27 I. INTRODUCTION.

28 Amicus Kings County Water District submits its reply brief on remedies. Defendants did not  
29 file a brief in opposition to the District's opening brief. Therefore, the relief requested therein should  
30 be granted, it being unopposed by Defendants. The relief requested should be granted on the additional  
31 grounds stated below. In sum, Defendants seem unable to come to grips with the simple idea that Prop.

1 1A sets forth plain requirements that must be met. Defendants have already been found in violation of  
2 two of Prop. 1A's requirements, and the appropriate relief must ensue.

3 **II. THIS CASE RAISES A PLEA FOR RULE OF LAW AND PROCESS INTEGRITY.**

4 Defendants have submitted a disturbing brief that they are not subject to remedies for their  
5 violations of Prop. 1A. They believe Prop. 1A should be re-written to accommodate their needs. This  
6 seems, to put it mildly, contrary to the classical concepts of rule of law and process integrity.

7 In his magisterial work, The Rise of the West: A History of the Human Community, William H.  
8 McNeill comments on the significance of Roman law and the concepts it embodied:

9 The laws of nature, as analyzed mathematically and descriptively by Ptolemy and Galen, bore  
10 an interesting, and perhaps not entirely accidental similarity to the law of nations and of nature,  
11 as discerned by a long succession of Roman jurists. Roman jurisprudence culminated in the  
12 work of such men as Ulpian and Papinian at the very end of the second century A.D. and the  
13 beginning of the third. The concept of an objective law applicable to human affairs, yet  
14 operating in accord with Nature and Reason and apart both from divine revelation and from  
15 human whim or passion, was peculiar to Rome and societies descended from the Roman. Other  
16 civilized peoples had laws and law codes, to be sure; but their laws were normally confined to  
17 criminal and public matters, leaving merely private relations to private or customary regulation.  
18 Roman law, as developed in the cosmopolitan milieu of the empire, attempted to bring regular  
19 classification and clear rules to bear upon the confusing multiplicity of both public and private  
20 concerns. Concepts of ownership, contract, and property--matters so intimate to our daily lives  
21 that we scarcely notice their existence--were more and more precisely defined, so that particular  
22 disputes could be reduced to a legal case and settled in accordance with a published rule through  
23 a judicial process. To a complex, individualized, and urbanized society, the advantages of such  
24 a legal system are enormous, for it tends to make dealings with strangers predictable and safe,  
25 even in the absence of any firm customary consensus. No other early civilization developed a  
26 legal system of such refinement and generality. Elsewhere, local custom, group mores, family  
traditions retained greater scope, while the personal discretion of officials and men of power  
enjoyed a much wider range. [¶] The value of the Roman law to subsequent European  
civilization would be difficult to exaggerate. McNeill The Rise of the West: A History of the  
Human Community (Chicago UP 1963) at 355 (emphasis added).

21 Defendants' approach would set matters back to a milieu where "the personal discretion of  
22 officials and men of power enjoyed a much wider range" in contrast to "The concept of an objective law  
23 applicable to human affairs [operating] . . . apart both from divine revelation and from human whim or  
24 passion." The objectivity that is the hallmark of rule of law would be lost.

25 It should not be so difficult to get Defendants to comply with the laws of the State. Even if much  
26 is at stake, the outcome should be straightforward. Defendants' violations of Prop. 1A should entail

1 issuance of the appropriate writ and adjunct or complimentary remedies such as accounting and  
2 injunction.

3 Defendants themselves offer up their version of an accounting in an effort to show they have not  
4 unlawfully spent funds. They cannot complain if they are taken up on their offer, and formally ordered  
5 to such an account of monies spent thus far, the sources of such funds, and the objects of such  
6 expenditures. Nor can they complain if they are enjoined from further expenditures until they can show  
7 their bona fides with the taxpayers' (both federal and state) money spent thus far.

8 Prop. 1A was drafted by the Legislature, placed before, and approved, by the voters. Prop. 1A  
9 sets numerous step by step requirements for the expenditure of bond funds. For example, Prop. 1A  
10 requires that the Authority to have \$31 billion available and committed before it may commence  
11 construction of the 300 mile "usable segment" that IT selected as the starting segment for the project.  
12 The Court ruled that this requirement was not met.

13 Defendants flail vigorously against the imposition of appropriate remedies because they know  
14 they cannot met the funding plan requirements. They do not want to redo the illegal funding plan  
15 because they know they will not be able to show they have all the funding needed to build the limited  
16 portion of the project they want to build. They cannot comply with Streets & Highways Code §  
17 2704.08(c)(2)(D). If so, this had better be known now rather than after the limited existing funds are  
18 expended, and what has been constructed is analogous to the Embarcadero Freeway "to nowhere."

19 But being unable to comply with Streets & Highways Code § 2704.08(c)(2)(D) does not mean  
20 Defendants are excused from complying with Prop. 1A interpreted and applied according to its plain  
21 terms. There is simply no authority to avoid the requirement to approve a lawful § 2704.08(c)(2)  
22 funding plan. That requirement cannot be met by proceeding to approve a § 2704.08(d)(1) funding plan.  
23 The statute requires the former before proceeding to the latter.

24 Defendants' record is one of lack of transparency and process integrity. Meetings, such as those  
25 on March 18, 2013, occur without any known prior official action to bring them about. They occur  
26

1 under dubitable circumstance, without established compliance with Defendants will not respond to  
2 discovery, object to producing witnesses, and offer attorney's testimony in oral argument instead.

3 **III. AS AN ADJUDICATED LAW BREAKER, THE AUTHORITY IS NOT ENTITLED TO**  
4 **THE PRESUMPTION THAT IT WILL ACT LAWFULLY.**

5 The Authority makes the surprising claim at the end of its brief that Plaintiffs cannot rebut the  
6 presumption of Evidence Code § 664 which states: "It is presumed that official duty has been regularly  
7 performed. This presumption does not apply on an issue as to the lawfulness of an arrest if it is found  
8 or otherwise established that the arrest was made without a warrant."

9 The presumption has been disproved by the findings of Prop. 1A violations in the Court's August  
10 16, 2013 "Ruling on Submitted Matter: Petition for Writ of Mandate."

11 The Court found that defendants High-Speed Rail Authority ("Authority") et al. had failed to  
12 proceed in the manner required by law, and were in violation of the following provisions of Prop. 1A:

- 13 1. that the funding plan does not comply with the plain language of Section  
14 2704.08(c)(2)(D), because it does not properly identify sources of funds for the entire  
15 IOS. Ruling p. 9, ll. 12-13.
- 16 2. the Authority's contention that its certification complied with the substance of the  
17 funding plan reporting requirement for environmental clearances is unpersuasive. The  
18 substance of that requirement is amply clear from the language of the statute itself: the  
19 Authority is to certify that project level environmental clearances are complete. A  
20 certification that such clearances will be completed by some later date obviously fails to  
21 comply. Ruling p. 11, ll. 2-6 (referring to section 2704.08(c)(2)(K) requiring the funding  
22 plan to certify that "The Authority has completed all necessary project level  
23 environmental clearances necessary to proceed to construction").

24 These violations are simple, straightforward and apparent from the plain language of the statute.  
25 Failure to proceed in the manner required by law under the plain and simple statutory language compels  
26 clear, simple, strong remedies before the Defendants proceed to spend even more money. See

1 accompanying Request for Judicial Notice Exhibit 1, Media Advisory advertising Industry Forum for  
2 Potential Bidders on Construction Package 2-3.

3 The Ruling also makes the significant point that “the funding plan as a whole is required to  
4 address the “corridor, or usable segment thereof”, and not some portion of that corridor or segment. The  
5 reference to “construction” in subsection (K) therefore is most reasonably interpreted as pertaining to  
6 the entire “corridor, or usable segment thereof” addressed by the funding plan, and not to the ICS, which  
7 is merely a portion of that corridor or usable segment.” Ruling, p. 10, ll. 5-10.

8 This is significant because the Authority is segmenting the project illegally in its funding,  
9 planning and construction. Section 2704.04(a)(3)(A)-(G) authorized seven “high-speed train corridors”  
10 which do not include a separate Merced to Bakersfield “corridor” or a Merced to Fresno “corridor” or  
11 a Fresno to Bakersfield “corridor.” Stand alone Merced-Fresno or Fresno-Bakersfield sections at most  
12 might be considered “useable segment[s]” under § 2704.01(g), but are not authorized for separate  
13 funding under § 2704.04(a)(3). This is why the funding plan required by § 2704.08(c)(2) must include  
14 “(D) The sources of all funds to be invested in the corridor, or usable segment thereof, and the  
15 anticipated time of receipt of those funds based on expected commitments, authorizations, agreements,  
16 allocations, or other means.” (Emphasis added.)

17 Moreover, a useable segment must be a portion of a corridor which in turn is a portion of the  
18 high-speed train system. If the Authority is proposing separate Merced-Fresno or Fresno-Bakersfield  
19 as (potentially) stand alone “sections,” these projects are not legally fundable with proceeds of bonds  
20 sold under the authority of Prop. 1A. There is no authority under Prop. 1A to authorizing the Authority  
21 to build stand alone segments or sections of “high speed train corridors” or “usable segments thereof”  
22 without building the entire California High Speed Train Project of which the recognized corridors are  
23 a part.

24 The authority cited by the Authority in support of the claim that it is entitled to a presumption  
25 that it will behave lawfully do not support its position. In Concerned Citizens of Palm Desert v. Board  
26 of Supervisors of Riverside County (1974) 38 Cal. App. 3d 257, 271, the Court did reverse the trial

1 court's denial of that portion of the writ petition seeking review and annulment of a zone change. In  
2 Terminal Plaza Corp. v. City and County of San Francisco (1986) 186 Cal. App. 3d 814, 836, the Court  
3 stated that the writ may issue to enforce a present duty [in that case, to provide for pedestrian access  
4 during construction]. The court noted:

5 Now, five years after the condition was imposed, respondents complain about the harm and huge  
6 expense belated compliance would entail; providing graphic illustration of the perils of failing  
7 promptly to enforce the resolution as written or, if the commission did not intend the resolution  
8 to mean what it clearly says, to modify or amend it.

9 Defendants at all times have a present duty to proceed in the manner required by Prop. 1A. This  
10 includes the requirement to produce the funding plan required by § 2704.08(c) and satisfying the  
11 required conditions of that provision.

12 Nothing in the statute authorizes the conflation of this duty with the duty to produce the funding  
13 plan required by § 2704.08(d). To do so would represent re-writing the statute voters approved, which  
14 is forbidden.

15 **IV. INJUNCTIVE RELIEF IS AN APPROPRIATE ANCILLARY FORM OF RELIEF IN**  
16 **MANDAMUS UNDER THESE CIRCUMSTANCES.**

17 CCP § 1085 provides: "A writ of mandate may be issued by any court to any inferior tribunal,  
18 corporation, board or person, to compel the performance of an act which the law specially enjoins, as  
19 a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and  
20 enjoyment of a right or office to which the party is party to the use and enjoyment of a right or office to  
21 which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal,  
22 corporation, board, or person." Code of Civ. Proc. §1085(a).

23 Nothing in this language precludes appropriate concurrent remedies, under the circumstances of  
24 a given case. In the trial court mandate and injunction tend to overlap. See 8 Witkin, Cal. Procedure  
25 (5<sup>th</sup> ed. 2008 & 2013 Supp), Extraordinary Writs § 24(a) at 904. Furthermore, an alternative writ has  
26 injunctive effect.

The writ must be either alternative or peremptory. The alternative writ must command the party  
to whom it is directed to desist or refrain from further proceedings in the action or matter  
specified therein, until the further order of the court from which it is issued, and to show cause

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before such court at a time and place then or thereafter specified by court order why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained must be omitted. CCP §1086.

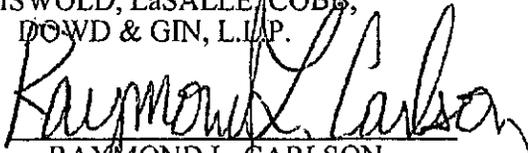
There is a priori no conflict between mandate and injunction or other remedies. In the circumstances of this case, accounting is also an appropriate concurrent remedy. See Request for Judicial Notice at Exhibit 2 and related discussion.

**V. CONCLUSION AND JOINDER IN PLAINTIFFS' REPLY BRIEF ON REMEDIES AND SUPPORTING DECLARATIONS.**

For the reasons stated above and in Amicus District's opening brief on remedies, the appropriate writ should be issued setting aside the Authority's approval of the funding plan and commanding it to adopt a new and different funding plan meeting the clear requirements of Prop. 1A, ordering an accounting of moneys spent to date, the sources and objects of such expenditure, and an injunction enjoining the Authority from expending any moneys (other than as allowed by Prop. 1A) until the return on the writ and approval of the accounting.

Amicus also joins Plaintiffs' reply brief on remedies, request for judicial notice, and supporting declarations of William Warren, Rita Wespi, and Stuart Flashman.

DATED: October 25, 2013.

Respectfully Submitted,  
GRISWOLD, LaSALLE, COBB,  
DOWD & GIN, L.L.P.  
By:   
RAYMOND L. CARLSON  
Attorneys for Amicus Curiae  
KINGS COUNTY WATER DISTRICT

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PROOF OF SERVICE  
CCP §§ 1011, 1013, 1013a, 2015.5; FRCP 5(b)

I am employed in the County of Kings, State of California. I am over the age of 18 years and not a party to the within action; my business address is 111 E. Seventh Street, Hanford, CA 93230.

On October 25, 2013, I served the following document(s): REPLY BRIEF ON REMEDIES OF AMICUS CURIAE KINGS COUNTY WATER DISTRICT on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

S. Michele Inan, Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102  
Attorneys for Respondents and Defendants  
Telephone: (415) 703-5474  
Facsimile: (415) 703-5480  
E-mail: [michele.inan@doj.ca.gov](mailto:michele.inan@doj.ca.gov)

Michael J. Brady  
1001 Marshall Street, Ste. 500  
Redwood City, CA 94063-2052  
Attorney for Plaintiffs and Petitioners  
Telephone: (650) 364-8299  
Facsimile: (650) 780-1701  
E-mail: [mbrady@rmkb.com](mailto:mbrady@rmkb.com)

Stuart M. Flashman  
LAW OFFICES OF STUART M. FLASHMAN  
5626 Ocean View Drive  
Oakland, CA 94618-1533  
Attorney for Plaintiffs and Petitioners  
Telephone/Facsimile: (510) 652-5373  
E-mail: [stu@stuflash.com](mailto:stu@stuflash.com)

(By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Hanford, California, in the ordinary course of business.

(By Mail) I deposited such envelope in the United States mail at Hanford, California. The envelope was mailed with postage thereon fully prepaid.

(By Overnight Delivery) I deposited such envelope in the Federal Express/UPS Next Day Air/U.S. Mail Express Mail depository at Hanford, California. The envelope was sent with delivery charges thereon fully prepaid.

(By Electronic Mail) I caused such documents to be sent to the stated recipient via electronic mail to the e-mail address as stated herein.

(By Personal Service) I caused such envelope to be hand delivered to the offices of the addressee(s) shown above.

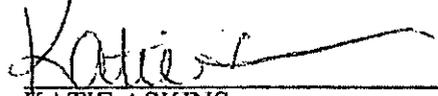
(By Facsimile) I caused each document to be delivered by electronic facsimile to the offices listed above.

(State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing 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.

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Executed on October 25, 2013, at Hanford, California.

  
KATIE ASKINS