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EXEMPT FROM FEES PER  
GOVERNMENT CODE §6103

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8 JOHN TOS, AARON FUKUDA,  
AND COUNTY OF KINGS  
9

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

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

No. 34-2011-00113919 filed 11/14/2011  
Judge Assigned for All Purposes:  
HONORABLE MICHAEL P. KENNY  
Department: 31 (to be handled as writ)  
PLAINTIFFS' OPENING BRIEF ON  
REMEDIES

Date: November 8, 2013  
Time: 9:00 AM  
Dept. 31  
Judge: Hon. Michael P. Kenny

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## INTRODUCTION

On August 16, 2013, this Court issued its Ruling on Submitted Matter: Petition for Writ of Mandate. In that ruling, the Court held that Respondent California High-Speed Rail Authority (“Respondent”) had abused its discretion by issuing a funding plan that did not comply with mandatory requirements approved by California voters in Proposition 1A. However, the Court left open the question of the proper remedy for Respondent’s improper action. The Court noted that, in the abstract, Petitioners were entitled to a writ of mandate ordering Respondent to rescind its approval of its funding plan. However, the Court questioned the efficacy of such a writ unless rescission of the funding plan approval would have a substantial or practical impact.

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The purpose of this brief is to explain why a writ of mandate ordering rescission of that plan’s approval, if accompanied by declaratory and injunctive relief as provided for in Plaintiffs’ Second Amended Complaint, would have substantial and practical effects and would provide at least a partial remedy for the wrongs complained of in the petition.

## ARGUMENT

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**I. PROPOSITION 1A LAID OUT A SEQUENTIAL AND LOGICAL SET OF CONDITIONS PRECEDENT TO COMMITTING TO THE EXPENDITURE OF BOND FUNDS FOR CONSTRUCTION AND REAL PROPERTY AND EQUIPMENT ACQUISITION FOR A USABLE SEGMENT.**

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**A. A SERIES OF STATUTORY REQUIREMENTS MUST BE COMPLETED SUCCESSFULLY BEFORE BOND PROCEEDS CAN BE USED TOWARDS CONSTRUCTION OF A USABLE SEGMENT.**

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Proposition 1A, in Streets & Highways Code<sup>1</sup> §2704.08, lays out a series of necessary preconditions that must be satisfied before Respondent can commit any Proposition 1A funds towards construction activities. Having decided that Respondent violated those requirements, the Court must now determine the consequences of those violations.

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Subsections (c) and (d) of §2704.08 lay out a sequence of events. As they apply here, they are: 1) Not later than 90 days prior to submission to the legislature and Governor of an initial request for capital costs for a corridor or usable segment thereof<sup>2</sup>, Respondent approves

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<sup>1</sup> Unless otherwise identified, all statutory referenced herein are to the California Streets & Highways Code.

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<sup>2</sup> Not including funds allowed under subsection (g) for right of way acquisition.

1 and submits to various entities, including specified legislative committees, an initial detailed  
2 funding plan for that corridor or usable segment; → 2) Respondent prepares a second, more  
3 detailed, funding plan; → 3) One or more independent financial analysts prepares a report or  
4 reports analyzing the second funding plan's compliance with various bond measure  
5 requirements; → 4) Respondent approves both the second funding plan and the analyst(s)  
6 report(s) and submits them to the Director of Finance and the Chair of the Joint Legislative  
7 Budget Committee; → 5) within sixty days, the Director of Finance reviews the second funding  
8 plan and the associated report(s); → 6) based on that review, the Director of Finance issues a  
9 finding that the second funding plan is likely to be successfully implemented as proposed; → 7)  
10 Respondent is allowed to enter into commitments to expend bond funds for the uses identified in  
11 subsection (d); →.8) Respondent signs contracts and makes other commitments of bond funds  
12 towards construction of IOS-S.<sup>3</sup>

13 The sequence of events in subsections (c) and (d) outlined above clearly constitute a  
14 chronological sequence beginning with the preparation of a valid funding plan and submission of  
15 that plan to the required entities. The language of the two subsections does not, however,  
16 specify or explain the effect of a failure to properly complete the crucial first step in the  
17 sequence. Those consequences, therefore, must be determined by the Court based on its  
18 construction of the meaning of the statute/contract.

19 B. IN DETERMINING THE INTENT OF THE VOTERS IN ENACTING A BOND  
20 MEASURE, STANDARD PRINCIPLES OF STATUTORY AND CONTRACT  
INTERPRETATION APPLY.

21 A bond measure has been characterized as a contract between the entity placing the  
22 measure on the ballot and the voters approving it. (*O'Farrell v. County of Sonoma* (1922) 189  
23 Cal. 343; *Monette-Shaw v. San Francisco Bd. of Supervisors* (2006) 139 Cal.App.4th 1210,

24 \_\_\_\_\_  
25 <sup>3</sup> Not included in the sequence laid out by subsections (c) and (d), but clearly connected to it,  
26 are: 1) the legislature's consideration and approval of an appropriation for construction and real  
27 property and equipment acquisition for the corridor or usable segment proposed in the funding  
plans and 2) the actual issuance of bonds whose proceeds would be used for the corridor or  
usable segment.

1 1215.) In this case, the measure, once approved by the voters, also became a statutory provision.  
2 As with any contract or statute, the starting point in determining Proposition 1A's meaning is the  
3 plain language of the contract/statute. If the language is clear, no interpretation is required or  
4 allowed, and the language of the statute/contract must be followed as written. (*Ceja v. Rudolph*  
5 *& Sletten, Inc.* (2013) 56 Cal.4th 1113, 1119; *Valencia v. Smyth* (2010) 185 Cal.App.4th 153,  
6 162.) If, however, there is an ambiguity in the language, the standard principles of contractual  
7 and statutory interpretation may be applied to determine the intent of the voters, which is the  
8 ultimate determinant of a ballot measure's meaning. (*People v. Superior Court* (2010) 48  
9 Cal.4th 564, 571.)

10 C. THE SEQUENCE OF EVENTS IN §2704.08(c) AND (d) CONSTITUTE A  
11 LOGICAL PROGRESSION WHERE EACH STEP REQUIRES PROPER  
COMPLETION OF ALL THE PRECEDING STEPS.

12 1. THE PLAIN LANGUAGE OF THE MEASURE, TAKEN IN CONTEXT,  
13 INDICATES A LOGICAL PROGRESSION OF STEPS.

14 In interpreting a statutory provision, the words must be given their ordinary meaning and  
15 must be viewed in their statutory context (*People v. Park* (2013) 56 Cal.4th 782, 796), and these  
16 principles apply equally to voter-approved measures. (*Id.*) The same is also true for contracts.  
17 (*Alameda County Flood Control & Water Conservation Dist. v. Department Of Water Resources*  
18 (2013) 213 Cal.App.4th 1163, 1179.)

19 The provisions of §2704.08(c) and (d) set forth a procedural path to be followed. That  
20 path was intended to ensure that the funds taxpayers were agreeing to provide would be used  
21 carefully and would not result in a partially-built unusable project. (*See* §2704.08(c)(2)(A)-(K);  
22 *See also*, Ruling on Submitted Matter issued August 16, 2012 at 10:27 [interpreting  
23 §2704.08(c)(2)(K) to limit environmental clearance requirement to ICS would conflict with the  
24 overall intent of statute].) In this context, the chronological sequence of required steps also  
25 functions as a logical sequence, where each event depends on the successful completion of the  
26 events preceding it. Only by interpreting the sequence in this manner would the voters' intent,

1 assuring that the project would be successfully completed before allowing a commitment of bond  
2 funds, be properly effectuated.

3 An example will clarify the relationships. When one gets up in the morning, the  
4 following sequence is generally followed: 1) wake up → 2) get out of bed → 3) get dressed →  
5 4) have breakfast → 5) leave for work. All these events occur in a chronological sequence.  
6 Some of them also occur in a required logical sequence. For example, it is not possible to get  
7 out of bed without first waking up.<sup>4</sup> Likewise, one must first get out of bed before one can get  
8 dressed. On the other hand, while one would generally have breakfast before leaving for work,  
9 that is not a logical necessity.

10 Each of the eight events outlined in subsections (c) and (d) requires, as a logical  
11 precondition, successful completion of the preceding steps. Thus, the Director of Finance's  
12 finding requires his/her prior consideration of the second funding plan, which, in turn, requires  
13 prior submission to him/her of that plan and its accompanying report(s). Perhaps most  
14 importantly, the second funding plan is based on, and includes additional details of, components  
15 of the initial funding plan. Thus successful completion of the initial funding plan is a necessary  
16 prerequisite for Respondent to prepare and approve its second funding plan.

17 As the Court noted at oral argument on May 31<sup>st</sup> (transcript of May 31<sup>st</sup> hearing at 29:28-  
18 30:9<sup>5</sup>) and discussed further in its subsequent Ruling on Submitted Matter, this conclusion is  
19 reinforced by the fact that, unlike the initial funding plan, the second funding plan includes no  
20 mention of environmental clearances. The presumed reason for this is that, having already  
21 certified in the initial funding plan that all necessary environmental clearances for the full IOS  
22 had already been completed, there was nothing further to be said on that topic in the second  
23 funding plan. In all other respects, such as feasibility, suitability and readiness for high-speed  
24 rail use, funding, utility upon completion, self-supporting nature [i.e, no operating subsidy

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26 <sup>4</sup> Putting aside the unusual event of sleep-walking.

27 <sup>5</sup> See also *Id.* at 49:18-51:4.

1 required], the second funding plan and its accompanying report provide further detail that builds  
2 upon the information contained in the initial funding plan. (Compare §2704.08(c)(2)(A)-(J) with  
3 §2704.08(d)(2)(A)-(E).)

4 2. THE LEGISLATIVE HISTORY OF THE STATUTE AND THE  
5 LANGUAGE PROVIDED TO VOTERS FURTHER FORTIFIES THE  
6 CONCLUSION THAT THE STEPS IN §2704.08(c) AND (d)  
7 CONSTITUTE A LOGICAL PROGRESSION

8 Even if the plain language of the statute, in context, were not sufficient to force the  
9 conclusion that the steps in subsections (c) and (d) constituted a logical progression, the  
10 legislative history of the statute and the information provided to the voters lead to the same  
11 conclusion.

12 In interpreting a statute or ballot measure, the legislative history may be consulted to  
13 determine the intent of the legislature (or the voters) in enacting the measure. (*City of Claremont*  
14 *v. Kruse* (2009) 177 Cal.App.4th 1153, 1172.) The same principles also apply to considering  
15 extrinsic evidence (which would include legislative history) in interpreting an ambiguous  
16 contract provision. (*In re Marriage of Facter* (2013) 212 Cal.App.4th 967, 980.)

17 Assembly Bill 3034, which included the bond measure language as Section 9 thereof,  
18 was amended in the Senate to add the requirements of §2704.08(c) and (d). (Plaintiffs' Request  
19 for Judicial Notice, Part I – in Support of Motion for Peremptory Writ of Mandate [“RJN”],  
20 Exhibit G.) The Senate Floor Analysis for the bill, which included the amendments made in  
21 Senate committees, highlights that the bill:

22 ... Requires the High-Speed Rail Authority prior to seeking an appropriation of  
23 bond proceeds to have obtained all the necessary environmental clearances so that  
24 construction may commence. (RJN Exhibit E at p.5.)

25 On the Senate floor, the bill was further amended to add the requirements for preparation  
26 of the second funding plan and associated report(s), their transmittal to the Director of Finance  
27 for his/her review, and his/her finding that the plan is likely to be successfully implemented prior  
28 to Respondent being allowed to proceed with the project. (RJN Exhibit F at p.5.) Further, these  
29 legislative amendments occurred against the backdrop of the Governor's May 2008-09 Budget  
30 Revision, which stated that the Governor would be proposing amendments to the then-pending  
bond act (AB 3034), “assuring that expenditures of the bond funds will result in operational  
high-speed rail services,” (RJN, Exhibit J at p.28.) and more specifically requiring that:



1 Before any construction or equipment purchase contracts can be signed for a  
2 portion of the system, there must be a complete funding plan that provides  
assurance that all funding needed to provide service on that portion of the system  
is secured. (*Id.*)

3 All of this evidence shows that, in writing the bond act, it was the intent of the  
4 legislature, and of the voters in approving it<sup>6</sup>, that the provisions of §2704.08(c) and (d) provide  
5 a sequential set of provisions that, properly done in sequence, would assure, “that the  
6 expenditure of the bond funds will result in operational high-speed rail services.” The only way  
7 to do that was to require that all of the provisions be properly complied with in the specified  
sequence.

8 The language provided to the voters in the November 2008 Voter Information Guide (1  
9 AR 1 *et seq.*) only further emphasizes the close connection between the initial and second  
10 funding plans. The Guide repeatedly emphasizes the “taxpayer protections” provided in the  
11 measure. (*Id.* at 5, [Legislative Analyst’s .Analysis], 6 [Argument in Favor, column 2, 3<sup>rd</sup>  
12 paragraph], 7 [Rebuttal Argument, 1<sup>st</sup> paragraph].) The Legislative Analyst’s analysis (*Id.* at 5)  
13 specifically states:

14 In addition, the authority generally must submit to the Department of Finance and  
15 the Legislature a detailed funding plan for each corridor or segment of a corridor,  
before bond funds would be appropriated for that corridor or segment. The  
16 funding plans must also be reviewed by a committee whose members include  
financial experts and high-speed train experts. *An updated funding plan* is  
17 required to be submitted and approved by the Director of Finance before the  
authority can spend the bond funds, once appropriated. [emphasis added]

18 The language clearly connects the initial funding plan with the second “updated” funding  
19 plan. The fact that the second funding plan is described as “updated” indicates that it was to be  
20 based upon the initial funding plan, only updated to provide more detailed and current  
21 information. Thus the voters expected that the second funding plan would rely upon the initial  
22 funding plan. If the initial funding plan was defective, the voters’ expectation would have been  
that updating would first require correction of those defects.

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26 <sup>6</sup> Unless there is evidence to the contrary, the intent of the voters approving a ballot measure is  
27 presumed to reflect the intent of the authors of the measure. (*Rossi v. Brown* (1995) 9 Cal.4th  
688, 700 fn.7.)

1 **II. RESPONDENT’S FAILURE TO PROPERLY COMPLETE THE INITIAL**  
2 **FUNDING PLAN PRECLUDES IT FROM MOVING FORWARD WITH THE**  
3 **REMAINING STEPS IN THE SEQUENCE UNTIL THAT FAILURE HAS BEEN**  
4 **CORRECTED.**

5 As the Court has already ruled, Respondent’s initial funding plan failed to meet  
6 mandatory requirements set by the voters in Proposition 1A. Consequently, that funding plan is  
7 defective, and a writ of mandate ordering rescission of its approval is an available remedy.  
8 Further, the writ should require that any subsequently-approved replacement to that funding plan  
9 fully comply with the requirements set by the voters in Proposition 1A, as set forth in the Court’s  
10 ruling of August 16, 2013.<sup>7</sup>

11 Beyond that, the legal inadequacy of Respondent’s initial funding plan, and its  
12 consequent rescission, means that a necessary precondition for Respondent’s preparation,  
13 approval, and submission of a second funding plan has not yet occurred. Consequently, it would  
14 be appropriate, as part of the Court’s remedy, for the Court to both issue a declaration that the  
15 subsequent steps set forth in subsection (d) require prior successful completion of the  
16 requirements in subsection (c) and to issue an injunction prohibiting Respondent from preparing,  
17 approving, or submitting a second funding plan pursuant to §2704.08(d) until after it has  
18 remedied the defects in its initial funding plan to the Court’s satisfaction.<sup>8</sup> Similarly, the Court’s  
19 declaration should make clear that none of the events intended to follow upon Respondent’s  
20 preparation and approval of its second funding plan can occur either until the requirements of  
21 subsection (c) have been properly fulfilled.<sup>9</sup>

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22 <sup>7</sup> While not necessary to correct Respondent’s prior violation, the Court should also enter a  
23 declaration that compliance with the requirements of Proposition 1A for any future initial  
24 funding plan will require compliance with the requirements of subsection (c)(2)(D) and (K) for  
25 the entirety of the corridor or usable segment whose construction is contemplated. (*See*  
26 *Plaintiffs’ Second Amended Complaint*, ¶¶ 32, 54.)

27 <sup>8</sup> An action seeking a peremptory writ of mandate can also grant, as adjuncts, injunctive and  
28 declaratory relief. (*See, e.g., Consulting Engineers & Land Surveyors of California, Inc. v.*  
29 *Professional Engineers in California Government* (2007) 42 Cal.4th 578, 584, 585, 592 [trial  
30 court granted writ of mandate and injunctive and declaratory relief; court of appeal and  
California Supreme Court affirmed].)

<sup>9</sup> Because the events following Respondent’s approval of the second funding plan are dependent  
upon that approval, it may well be that no separate injunction is needed to prevent their  
occurrence.

1 **III. THE COURT’S REMEDY SHOULD ALSO INCLUDE A WRIT OF MANDATE,**  
2 **OR ALTERNATIVELY A PROHIBITORY INJUNCTION AGAINST**  
3 **COMMITTING OR EXPENDING PROPOSITION 1A BOND FUNDS FOR ANY**  
4 **OF THE PURPOSES SET FORTH IN §2704.08(d) UNTIL THE**  
5 **PRECONDITIONS FOR SUCH COMMITMENT/SPENDING HAVE BEEN MET.**

6 In addition to issuing the writ of mandate and providing the injunctive and declaratory  
7 relief identified above, the Court must also address Respondent’s past actions and present intent  
8 on committing and expending Proposition 1A bond funds for purposes identified in §2704.08(d)  
9 without first meeting the necessary preconditions for those commitments or expenditures.

10 Respondent has already entered into commitments to expend bond proceeds for  
11 construction of, or real property or equipment acquisition for, a proposed usable segment.  
12 Respondent has entered into contracts with the California Department of Transportation  
13 (“Caltrans”) and Tudor-Perini-Parsons (“T-P-P”) for construction activities relating to the Initial  
14 Construction Segment. (See, Plaintiffs' Supplemental Request for Judicial Notice, Exhibits A  
15 and B.) Petitioners submit that, given Respondent’s noncompliance with subsection (d)’s  
16 preconditions, they are entitled to a writ of mandate ordering Respondent to rescind those  
17 contract approvals.

18 Respondent may argue, first, that those contracts include non-construction activities,  
19 including design, preliminary engineering, and land acquisition, that are allowable under  
20 §2704.08(g).<sup>10</sup> Respondent will likely also argue that it will not be using Proposition 1A bond  
21 proceeds to fulfill those contracts, and therefore they should not be ordered rescinded.

22 The two contracts in question total over \$1.2 Billion. (\$226 Million for Caltrans and  
23 \$985 Million for T-P-P.) Under the FRA grant agreement, no more than 50% of that total can  
24 come from federal ARRA funds.<sup>11</sup> The remainder (roughly \$600 Million) must be state funds

25 <sup>10</sup> Subsection (g) allows the commitment and expenditure of a limited amount of bond funds (up  
26 to 7.5% of the \$9 Billion designated for the high-speed rail system) as a “safe harbor” exception  
27 from the requirements of §2704.08. Those funds may be spent for specified construction-related,  
28 but not construction, expenses.

29 <sup>11</sup> See, Exhibit A to Plaintiffs’ Request for Judicial Notice in Support of Opposition to Motion to  
30 Consolidate [excerpt from FRA Amendment 5 to Grant/Cooperative Agreement for ARRA funds  
grant]. A small amount may also come from non-ARRA federal grants that do not require a  
matching state contribution.

1 (i.e., Proposition 1A bond funds<sup>12</sup>). The Caltrans contract includes only \$61 Million (for right-  
2 of-way and design) fundable under subsection (g). For the T-P-P contract, the analogous figure  
3 is approximately \$69 Million (for design). The remainder (\$600 Million minus \$130 Million  
4 [\$61 Million + \$69 Million allowable under subsection(g)] = \$470 Million) are Proposition 1A  
5 bond construction funds, which under subsection (d) cannot be committed prior to the Director  
6 of Finance making the required finding that the second funding plan is likely to be successfully  
7 implemented.<sup>13</sup> Because the required preconditions had not been met when these contracts were  
8 approved, those approvals were improper and should be ordered rescinded. Alternatively, if the  
9 Court feels that rescission is too drastic a remedy, the Court should issue a separate permanent  
10 injunction prohibiting Respondent from expending, or entering into commitments that would  
11 expend, any Proposition 1A bond funds on these or other construction-related contracts until the  
12 requirements for subsection(d) have been met, except to the extent such funds are properly  
13 authorized under §2704.08(g).

14 In order for Plaintiffs and the Court to determine Respondent's compliance with these  
15 remedial requirements, the Court should also order Respondent to prepare and submit to the  
16 Court, within 30 days of the Court's issuance of its order concerning remedies, a complete  
17 accounting of the Proposition 1A bond funds it has expended, is committed to expending, or  
18 plans to commit or expend within the next two years, and specifically any such funds involved in  
19 each of the following categories: administration, environmental studies, planning, preliminary  
20 engineering, land or equipment acquisition, and construction activities.

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25 <sup>12</sup> No significant amount of non-Proposition 1A bond state funds has been allocated to the ICS  
construction project.

26 <sup>13</sup> For the Caltrans contract alone, \$113 Million must be state funds, of which only \$61 Million  
27 are allowable under subsection (g). Again, expenditures under subsection (d) are required.

1 **IV. THE COURT SHOULD PROCEED TO CONSIDER PLAINTIFFS' CLAIMS**  
2 **UNDER THE CODE OF CIVIL PROCEDURE §526a PORTION OF THE**  
3 **COMPLAINT.**

4 While it might appear that the relief granted under the mandamus claims of the complaint  
5 obviates the need to proceed to the Code of Civil Procedure §526a causes of action, the fact that  
6 the legislative appropriation has been neither rescinded nor invalidated means that the §526a  
7 claims must be addressed. That appropriation includes authorizing the expenditure of both  
8 federal ARRA funds and Proposition 1A bond funds towards construction of the ICS. (See RJN  
9 Exhibit D at pp.1-2 and Attachment 1 thereto.)

10 The CCP §526a portion of the complaint alleges, among other things, that the project  
11 proposed for construction by Respondent, and for which the legislative appropriation is intended,  
12 does not satisfy the requirements of Proposition 1A. If those allegations are proved, then the  
13 project proposed for construction is not eligible to receive Proposition 1A bond funds, and to that  
14 extent not only should the expenditure of those funds be enjoined, but the appropriation should  
15 be declared invalid as violating Article 16 §1 of the California Constitution.

16 Further, if the Proposition 1A bond funds cannot be used to construct the ICS, then the  
17 expenditure of the federal ARRA grant funds, by themselves and without Proposition 1A funds,  
18 will not only violate the matching funds requirements of the ARRA grant, but will result in  
19 construction of neither a usable segment nor a segment with independent utility. Not only would  
20 this violate the grant requirements under ARRA, but it would also be a wasteful expenditure of  
21 public funds under Code of Civil Procedure §526a. (See ¶18 of Plaintiffs' Second Amended  
22 Complaint.) Therefore, expenditure of the \$3.2 Billion in ARRA funds appropriated towards  
23 construction of the ICS should also be enjoined pending a determination on the §526a claims.

24 **CONCLUSION**

25 As AB 3034, the bill that eventually resulted in the proposition 1A bond measure, moved  
26 through the legislative process, the legislature added a series of taxpayer protections to the bill.  
27 It did this in recognition of the need to assure the voters that the money they were being asked to  
28 authorize would be used wisely. As the Court has already ruled, Respondent violated those

1 provisions by issuing a funding plan that did not comply with Proposition 1A’s requirements for  
2 adequate funding and prior environmental clearance for the usable segment to be constructed  
3 with bond funds. The question of remedy is therefore key to assuring that the promises made to  
4 the voters remain meaningful.

5 In its Ruling on Submitted Matter, the Court queried whether a writ ordering rescission  
6 of Respondent’s funding plan would have any, “substantial or practical impact on the program.”  
7 The brief answer to this question is, “Yes.”

8 As stated in Plaintiffs’ Reply Brief in Support of Motion for Peremptory Writ of  
9 Mandate, Respondent’s violations of Proposition 1A in its preparation of the initial funding plan  
10 created a “house of cards” that was doomed to collapse. The remedy for those violations must  
11 include not only rescinding the defective funding plan and replacing it with a properly-prepared  
12 plan, but also repairing subsequent steps in the approval process that relied upon the defective  
13 plan. The remedy must therefore include an appropriate mix of relief by way of peremptory  
14 writ, declaratory relief, and injunctive relief. All of these remedies were identified in Plaintiffs’  
15 Second Amended Complaint. The remedy should also include Respondent’s submission to the  
16 Court of an accounting of its past, present, and proposed usage of Proposition 1A bond funds so  
17 that Plaintiffs and the Court can determine Respondent’s compliance with the Court’s order on  
18 remedies. Plaintiffs therefore respectfully request that the Court grant Plaintiffs’ remedy as  
19 requested.

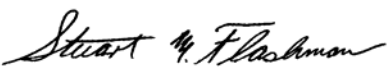
20 Dated: September 15, 2013

21 Respectfully submitted,

22 Michael P. Brady

23 Stuart M. Flashman

24 Attorneys for Plaintiffs John Tos,  
25 Aaron Fukuda, and County of Kings

26 By:   
\_\_\_\_\_

27 Stuart M. Flashman

## PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

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

On September 16, 2013, I served the within PLAINTIFFS' OPENING BRIEF ON REMEDIES; PLAINTIFFS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE; [proposed] ORDER ON REMEDIES IN MANDAMUS CAUSES OF ACTION on the parties listed below by placing a true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in a U.S. mailbox at Oakland, California addressed as follows:

Michele Inan, Deputy Attorney General  
Office of California Attorney General  
455 Golden Gate Ave., Ste. 11000  
San Francisco, CA 94102-7004  
[Michele.Inan@doj.ca.gov](mailto:Michele.Inan@doj.ca.gov)

Raymond L. Carlson, Esq.  
Griswold, LaSalle, Cobb, Dowd & Gin LLP  
111 East Seventh Street  
Hanford, CA 93230  
[carlson@griswoldlasalle.com](mailto:carlson@griswoldlasalle.com)

In addition, on the above-same day, I also sent electronic copies of the above-same documents, converted to "pdf" format, as an e-mail attachment, to the above-same parties at the e-mail addresses shown above.

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

Executed at Oakland, California on September 16, 2013.



Stuart M. Flashman