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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

**HIGH-SPEED RAIL AUTHORITY and
HIGH-SPEED PASSENGER TRAIN
FINANCE COMMITTEE, for the
STATE OF CALIFORNIA,**

Plaintiffs,

v.

**ALL PERSONS INTERESTED IN THE
MATTER OF THE VALIDITY OF
THE AUTHORIZATION AND
ISSUANCE OF GENERAL
OBLIGATION BONDS TO BE ISSUED
PURSUANT TO THE SAFE,
RELIABLE HIGH-SPEED
PASSENGER TRAIN BOND ACT FOR
THE 21ST CENTURY AND CERTAIN
PROCEEDING AND MATTER
RELATED THERETO,**

Defendants.

Case No. 34-2013-00140689-CU-MC-GDS

**RULING ON SUBMITTED MATTER:
COMPLAINT FOR VALIDATION OF
BONDS [CODE OF CIVIL PROCEDURE
SECTIONS 860, et seq.]**

Introduction and Summary of Court's Ruling

In this validation action under Code of Civil Procedure section 860, et seq., plaintiffs, which are two state administrative bodies involved in the construction of the proposed California high-speed rail system, seek a judgment approving their actions authorizing the issuance of more than eight billion dollars in bonds. The bonds are intended to provide funds that will be used to begin construction of the system.

1 For the reasons explained in detail below, the Court finds that the validation judgment must be
2 denied. The Court finds no evidence in the record that supports the plaintiffs’ determination that it was
3 necessary and desirable to authorize the issuance of bonds at the time that determination was made.

4 **Procedural Background**

5 Plaintiff California High-Speed Rail Authority (“Authority”) is the administrative body with
6 primary responsibility for overseeing the planning and construction of the proposed high-speed rail
7 system. Plaintiff High-Speed Passenger Train Finance Committee (“Finance Committee”) is the
8 administrative body with primary responsibility for authorizing the issuance of bonds that will be used to
9 finance initial construction of the system. Their activities are governed by the provisions of the Safe,
10 Reliable High-Speed Passenger Train Bond Act for the 21st Century, passed by the voters in 2008 (and
11 referred to in this ruling) as Proposition 1A, and now codified in Streets and Highways Code sections
12 2704, et seq.

13
14 On March 18, 2013, the Authority adopted a resolution asking the Finance Committee to authorize
15 the issuance of bonds in an amount of more than eight billion dollars. On the same date, the Finance
16 Committee adopted a resolution authorizing the issuance of bonds in the requested amount, on the basis
17 that it was “necessary and desirable” to do so.¹ Through their validation complaint, plaintiffs seek a
18 judgment that that the March 18, 2013 actions were valid.

19 Specifically, plaintiffs seek a judgment determining that “[a]ll proceedings by and for Plaintiffs in
20 connection with the Bonds, Notes and any Refunding Bonds to be issued pursuant to the Bond Act,
21 including the adoption of the Resolutions and the authorization of the issuance and sale of the Bonds,
22 Notes, and any Refunding Bonds, and any contracts related to the issuance and sale of the Bonds, Notes,
23 or any Refunding Bonds, were, are, and will be valid and binding, and were, are, and will be in conformity
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25 ¹ The resolutions in question authorize the issuance of general obligation bonds, general obligation commercial paper
26 notes, and refunding bonds. As the resolutions demonstrate, the Authority requested the Finance Committee to issue
27 all of these obligations, and the Finance Committee authorized issuance of all of these obligations, on the basis that it
28 was “necessary and desirable” to do so. The general obligation bonds appear to be the primary means of financing
the high speed rail project under Proposition 1A, and the parties in this action have referred to the debt obligations to
be issued under Proposition 1A generally as “bonds”. For the sake of convenience, the Court adopts the term
“bonds” in this ruling to refer generally to all debt obligations authorized by the resolutions in question.

1 with the applicable provisions of all laws and enactments in force or controlling upon such proceedings,
2 whether imposed by law, Constitution, statute, regulation, or otherwise”.²

3 Such a judgment, if entered, would conclusively establish the validity of plaintiffs’ actions, and
4 thus conclusively establish the validity of the bonds. (See, Code of Civil Procedure section 870.)

5 Several persons and entities have responded to the validation complaint and have filed trial briefs
6 as defendants in opposition to the complaint, including the following: John Tos, Aaron Fukuda and the
7 County of Kings³; Kings County Water District and Citizens for California High-Speed Rail
8 Accountability⁴; Howard Jarvis Taxpayers Association; Union Pacific Railroad Company; Eugene
9 Voiland; County of Kern; and Free Will Baptist Church.

10 On September 27, 2013, the Court held a hearing on the validation complaint at which it heard
11 oral argument on behalf of plaintiffs and defendants.⁵ At the close of the hearing, the Court took the
12 matter under submission. Having considered the oral and written arguments of the parties as well as the
13 evidence submitted by the parties, the Court now issues its ruling on the validation complaint.

14
15 **Kings County Water District Motion for Stay**

16 In addition to filing an opposition to the validation complaint on its merits, the District also filed a
17 motion to stay this action. Several other defendants have joined in the motion.⁶ Plaintiffs oppose the
18 motion.

19 The motion for stay is made pursuant to Code of Civil Procedure section 128(a)(8), which states
20 that the court shall have power “[t]o amend and control its process and orders so as to make them conform
21 to law and justice”, and pursuant to the court’s inherent power to govern the processes and proceedings
22 before it. Specifically, the motion is based on proceedings in a pending appeal in a separate case involving
23 the adequacy of the environmental review of a portion of the high-speed rail project under the California

24 _____
25 ² See, Complaint for Validation, paragraph 19.b., Prayer, paragraph 3.c.

26 ³ These defendants shall be referred to in this ruling collectively as “John Tos, et al.”.

27 ⁴ These defendants shall be referred to in this ruling collectively as the Kings County Water District, or simply “the District”.

28 ⁵ The Court did not issue a tentative ruling prior to the hearing.

⁶ Plaintiffs’ objections to the joinders in the motion to stay are overruled.

1 Environmental Quality Act (“CEQA”).⁷ Citing recent filings in that appeal, the District alleges that the
2 Authority now takes the position that CEQA does not apply to the high-speed rail project, based on federal
3 preemption, and is seeking a ruling to that effect from the appellate court. If that ruling is made, the
4 District argues, the Authority would no longer be able to comply with the provisions of Proposition 1A
5 that require compliance with CEQA, and validation of the bonds necessarily would have to be denied. The
6 District seeks to stay this validation action until the issue of preemption has been decided by the appellate
7 court.

8 The District’s arguments are not persuasive. Whether the Authority must comply, or has
9 complied, with CEQA is an issue related to the use of proceeds of the bonds. Issues regarding the use of
10 proceeds are separate from the issue raised in this validation action, which is whether the bonds were
11 properly authorized. Furthermore, issues regarding the use of proceeds are being addressed in a separate
12 action pending before this Court.⁸ Under these circumstances, the Court may address the merits of the
13 validation action without reference to the pending CEQA appeal. The Court accordingly concludes that a
14 stay of this action is not necessary or appropriate. The District’s motion is denied, and the Court will
15 proceed to address the merits of the validation action.

16 **Validation Action Standard of Review**

17 The present validation action addresses a quasi-legislative action of an administrative body,
18 specifically, the decision of the Finance Committee to authorize the issuance of the bonds for the high-
19 speed rail system under Proposition 1A. Although the action of the Authority requesting the Finance
20 Committee to take that action is relevant to the proceedings before the Court, that request did not authorize
21 the issuance of bonds and therefore is not the action specifically subject to review here.

22 As plaintiffs correctly point out, the scope of judicial review of the Finance Committee’s quasi-
23 legislative action is limited. As the Court of Appeal stated in *Morgan v. Community Redevelopment*
24 *Agency* (1991) 231 Cal. App. 3rd 243, 259-260: “It is not for the trial court to involve itself in the decision-
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26 _____
27 ⁷ *Town of Atherton, et al., v. California High Speed Rail Authority*, pending in the Third District Court of Appeal as
Case No. C070877.

28 ⁸ *John Tos, et al., v. California High Speed Rail Authority, et al.*, Case No. 2011-00113919.

1 making process of [an administrative agency]; the Legislature delegated legislative decisions to [the
2 agency] and not to the courts. Judicial review is limited to whether there was substantial evidence to
3 support the legislative decisions. [Citations omitted.] ‘The de novo type of review does not apply to
4 quasi-legislative acts of administrative officers and judicial review is limited to an examination of the
5 proceedings before the officer to determine whether his action has been arbitrary, capricious or entirely
6 lacking in evidentiary support.’ [Citation omitted.]”

7 As plaintiffs also point out, the non-adjudicatory acts of administrative agencies “are accorded the
8 most deferential level of judicial scrutiny.” (See, *Khan v. Los Angeles City Employees’ Retirement System*
9 (2010) 187 Cal. App. 4th 98, 106. quoting *Pulaski v. Occupational Safety & Health Appeals Board* (1999)
10 75 Cal. App. 4th 1315, 1331.)

11 Such limited review is grounded in the doctrine of separation of powers, acknowledges the
12 expertise of the agency, and derives from the view that courts should let administrative boards and officers
13 work out their problems with as little judicial interference as possible. It also recognizes that a challenged
14 administrative agency action comes before the court with a strong presumption that the agency’s official
15 duty has been regularly performed and that the burden is on the challenging parties to show that the
16 agency’s action is invalid. (See, *Alejo v. Torlakson* (2013) 212 Cal. App. 4th 768, 780.)

18 **Statutory Requirements Related to Bond Authorization**

19 The statutory requirements governing the Finance Committee’s decision to authorize the issuance
20 of bonds under Proposition 1A guide the Court’s review of this matter.

21 Government Code section 16730 generally applies to determinations by state agencies to authorize
22 the issuance of bonds. It provides: “Upon request of the board, as required in the bond act, the committee
23 shall determine the necessity or desirability...of issuing any bonds to be authorized....”

24 Streets and Highways Code section 2704.13, which was enacted as part of Proposition 1A,
25 specifically applies to the high-speed rail program. It provides that the Finance Committee “...shall
26 determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in
27 order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds
28

1 to be issued and sold.”⁹

2 **Preliminary Evidentiary Issues**

3 One of the primary contentions the defendants make in this case is that the Finance Committee’s
4 action is not supported by evidence in the record. In order to resolve this issue, which requires the Court
5 to determine the evidentiary support for the Finance Committee’s action based on the record of its
6 proceedings in connection with the March 18, 2013 Resolution, the Court must first settle the content of
7 the record by resolving various evidentiary issues raised by the parties.

8 Defendants John Tos, et al., have filed a request for judicial notice of the Court’s files in the
9 related case of *John Tos, et al., v. California High-Speed Rail Authority, et al.*, Case No. 2011-00113919
10 and of Executive Order W-48-93. The request for judicial notice is denied on the ground that the materials
11 in question are irrelevant in that they are not necessary to the resolution of this matter. (See, *County of*
12 *San Diego v. State of California* (2008) 164 Cal. App. 4th 580, 613, footnote 29.)

13
14 Defendants John Tos, et al., have filed a declaration of their counsel, Stuart M. Flashman, with an
15 attached Exhibit A, which is a copy of a letter Mr. Flashman sent to California State Treasurer Bill
16 Lockyer, dated March 15, 2013, regarding “Monday, March 18th Meeting of High-Speed Passenger Train
17 Finance Committee”. Plaintiffs object to the declaration and the letter. The objection is overruled. The
18 letter constitutes a public comment submitted to the Finance Committee regarding its proposed action
19 authorizing the issuance of bonds for construction of the high-speed rail system. The letter therefore is
20 appropriately included and considered as part of the record of proceedings in this matter.

21 Defendant Kings County Water District has filed a request for judicial notice of the Court’s
22 August 16, 2013 ruling in the related case of *John Tos, et al., v. California High-Speed Rail Authority, et*
23 *al.*, Case No. 2011-00113919, and of pleadings filed by the Authority in this case in connection with a
24 motion to consolidate the two related cases. The request for judicial notice is denied on the ground that

25 _____
26 ⁹ Section 2704.06 provides that the net proceeds received from the sale of nine billion dollars in bonds authorized by
27 Proposition 1A shall be available, upon appropriation by the Legislature, for planning and capital costs for high-
28 speed rail. Section 2704.095 provides that the net proceeds received from the sale of nine hundred fifty million
dollars in bonds authorized by Proposition 1A shall be allocated to eligible recipients for capital improvements to
intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train
system and its facilities, or that are part of the construction of the system.

1 the materials in question are irrelevant in that they are not necessary to the resolution of this matter. (See,
2 *County of San Diego v. State of California* (2008) 164 Cal. App. 4th 580, 613, footnote 29.)

3 Defendants John Tos, et al., have filed a Declaration of Rita Wespi with attached documentary
4 exhibits. Plaintiffs have objected to portions of the Declaration, but have not objected to the attached
5 exhibits. Plaintiffs' objections to the challenged language in paragraph 2, pages 1:27-2:2, paragraph 5,
6 pages 2:9-13 and paragraph 17, page 4:19-21 are sustained on the ground that the challenged portions of
7 the declaration represent legal opinion. Plaintiffs' objection to the challenged language in paragraph 15,
8 page 4:10-12 is overruled on the ground that this portion of the declaration describes an authorized
9 admission by the General Counsel for the State Treasurer, who is a member of the Finance Committee,
10 regarding documents that were provided to the Treasurer or the full Finance Committee prior to the March
11 18, 2013 meeting, and which therefore appropriately would be considered part of the record of
12 proceedings in this matter.

13
14 Based on the Rita Wespi Declaration, the Court finds that two of the attached documentary
15 exhibits are appropriately included and considered a part of the record of proceedings in this matter.

16 Exhibit F is a Memorandum of the State Treasurer's Office dated March 15, 2013 from Blake
17 Fowler, Public Finance Division, to Katie Carroll, Deputy Treasurer, regarding "Briefing Memo for the
18 March 18, 2013 General Obligation Bond Finance Committee Meeting". Ms. Carroll attended and voted
19 at that meeting as a designated substitute for the State Treasurer.¹⁰ Although the briefing memo normally
20 is considered to be confidential as part of internal deliberations, the State Treasurer's Office released it in
21 response to a Public Records Act request by Ms. Wespi¹¹, thereby waiving confidentiality for the purposes
22 of this proceeding. Because Ms. Carroll received and presumably reviewed the memorandum in
23 preparation for the meeting of the Finance Committee, the Court will consider it as part of the record of
24 proceedings.

25 Exhibit G is a copy of an e-mail message dated March 15, 2013 from Kevin Dayton (President and
26

27 ¹⁰ See, Declaration of Geoffrey Palmertree, Exhibit B, page 25.

28 ¹¹ See, Declaration of Rita Wespi, Exhibit E (E-mail from Mark Paxson, General Counsel, to Rita Wespi, dated March 28, 2013.)

1 CEO of Labor Issues Solutions, LLC) to Timothy Aguirre to be forwarded to the Finance Committee in
2 connection with its March 18, 2013 meeting. The message requests an amendment to the proposed
3 resolutions authorizing the issuance of bonds, specifically addressing the terms of maturity of the bonds.
4 The letter is a public comment submitted to the Finance Committee in advance of its meeting, and
5 therefore will be received and considered as part of the record of proceedings.

6 Defendant Kings County Water District has attached a document to its opposition brief as Exhibit
7 A, which appears to be a memorandum prepared by Rita Wespi dated on or about June 4, 2013, entitled
8 “The Bond Resolution Approval Process for the High-Speed Rail Project”. The document includes a
9 number of attached exhibits. Plaintiffs object to this memorandum. Their objection is sustained on the
10 ground that the memorandum represents legal opinion regarding the content of the record in this case and
11 the propriety of plaintiffs’ actions. Although plaintiffs do not object to the attached exhibits, the Court
12 finds that most of the exhibits are unnecessary to the resolution of this matter and thus irrelevant (such as
13 documents setting forth the history of Public Records Act requests for Finance Committee documents, a
14 briefing memo regarding a 2009 meeting of the Finance Committee, and briefing memos for other general
15 obligation bond finance committees). The Court has not considered those documents in making its ruling.
16 One attached document is a copy of the briefing memo to Deputy Treasurer Katie Carroll for the Finance
17 Committee’s March 18, 2013 meeting. As stated above, the Court will consider that memo as part of the
18 record in this proceeding.

20 Defendant Kings County Water District also has submitted a Declaration of Raymond L. Carlson
21 in support of its opposition, with attached exhibits A- Q. Plaintiffs object to the Declaration and all
22 exhibits except M, O and P. As discussed below, Exhibits M, O and P are already part of the record of
23 proceedings in this action.¹² The objections to the remaining exhibits are sustained. The Declaration and
24 exhibits relate to the District’s argument regarding the alleged violations of the Bagley-Keene Open
25 Meeting Act, Government Code sections 11120-11132. Evidence of such violations, if they existed, is
26 irrelevant in this matter, because a violation of the Open Meeting Act may not be the basis for declaring an

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28 ¹² Exhibit M is the Agenda for the Authority’s March 18, 2013 meeting; Exhibit O is the Authority’s Resolution
#HSRA 13-03; and Exhibit P is the Agenda for the Finance Committee’s March 18, 2013 meeting.

1 action null and void where that action was taken in connection with the sale or issuance of bonds. (See,
2 Government Code section 11130.3(b)(1).)

3 Defendant Howard Jarvis Taxpayers Association has filed a request for judicial notice of two
4 documents issued by the State Auditor (Exhibits A and B), one document issued by the Legislative
5 Analyst's Office (Exhibit C), the Supplemental Voter Information Guide for the November 4, 2008
6 General Election, in which Proposition 1A was on the ballot (Exhibit D), documents related to
7 Congressional subcommittee hearings regarding the high-speed rail program (Exhibits E, F and G), and a
8 March 2013 report on the high-speed rail program issued by the United States Government Accountability
9 Office (Exhibit H). Plaintiffs object to all of the materials except Exhibit D. The objections to Exhibits A,
10 B, C, E, F, G and H are sustained and the request for judicial notice of those exhibits is denied on the
11 ground that the materials in question are irrelevant in that they are not necessary to the resolution of this
12 matter. (See, *County of San Diego v. State of California* (2008) 164 Cal. App. 4th 580, 613, footnote 29.)
13 The request for judicial notice of the Supplemental Voter Information Guide is granted on the ground that
14 the content of the guide pertains entirely to Proposition 1A and therefore is relevant to the issues raised in
15 this proceeding. Furthermore, the guide is an official publication of the California Secretary of State and
16 is therefore properly subject to judicial notice under Evidence Code section 452(c).
17

18 Plaintiffs have filed a request for judicial notice in support of their reply trial brief.¹³ The request
19 involves two documents: Exhibit A, which is a copy of minutes of the Authority's March 18, 2013
20 meeting; and Exhibit B, which is a copy of a letter dated March 15, 2013 from the Chairman of the
21 Authority to the State Treasurer regarding "Delegation of Authority" to named individuals to act in his
22 place on the Finance Committee. Defendants John Tos, et al., joined by other defendants, have objected to
23 the request for judicial notice.

24 The objections to Exhibit A are overruled and the request for judicial notice of the minutes is
25 granted on the grounds that the minutes represent an official act of an administrative agency of the
26 executive department of the State of California pursuant to Evidence Code section 452(c), and that the
27

28 ¹³ The motion by defendants John Tos, et al., to strike portions of the reply brief is denied.

1 minutes are appropriately received and considered as part of the record of the Authority's proceedings in
2 this matter. The objections to Exhibit B are sustained and the request for judicial notice of the letter is
3 denied on the ground that the Chairman's delegation of authority is not a disputed issue in this case,
4 rendering the letter irrelevant.

5 **Summary of the Contents of the Record of Proceedings**

6 Plaintiffs have submitted an evidentiary record of the proceedings before the Authority and the
7 Finance Committee.

8 Plaintiffs' record of the proceedings before the Authority related to its March 18, 2013 adoption of
9 a resolution requesting that the Finance Committee authorize the issuance of bonds is contained in the
10 documents attached to the Declaration of Angela Reed. Ms. Reed was the Authority's interim Secretary at
11 the time of the challenged action, and is a custodian of its records. The record of the Authority's action
12 thus contains the following documents:

13 Reed Declaration, Exhibit A: The Meeting Agenda for the Authority's March 18, 2013 meeting.

14 Reed Declaration, Exhibit B: The Authority's Resolution #HSRA 13-03, adopted at the March 18,
15 2013 meeting.

16 As stated above, the record of the Authority's action also contains the Minutes of the Authority's
17 March 18, 2013 meeting (plaintiffs' Reply Request for Judicial Notice, Exhibit A).

18 Plaintiffs' record of the proceedings before the Finance Committee related to its March 13, 2013
19 adoption of a resolution authorizing the issuance of bonds is contained in the documents attached to the
20 Declaration of Geoffrey Palmertree. Mr. Palmertree is the Secretary of the Finance Committee and a
21 custodian of its records. The record contains the following documents:

22 Palmertree Declaration, Exhibit A: The Meeting Notice and Agenda for the Finance Committee's
23 March 18, 2013 meeting.

24 Palmertree Declaration, Exhibit B: The Authority's Resolution IX (2013), adopted at the March
25 18, 2013 meeting.

26 Palmertree Declaration, Exhibit C: The Authority's Resolution X (2013), also adopted at the
27
28

1 March 18, 2013 meeting.

2 As provided above, the Court also considers the following materials to be part of the record of the
3 Finance Committee's action: Declaration of Stuart M. Flashman, Exhibit A (public comment); Declaration
4 of Rita Wespi, Exhibit F (briefing memo); and Declaration of Rita Wespi, Exhibit G (public comment).

5 **Content of the Resolutions Authorizing Issuance of Bonds**

6 The relevant portions of the resolutions at issue are as follows.

7 The Authority's Resolution #HSRA 13-03 contains a "whereas" clause stating that "the Authority
8 desires to request the Committee to authorize issuance of bonds and commercial paper notes under the
9 Bond Act to provide funds for the projects as authorized in sections 2704.04 and 2704.06 of the Streets
10 and Highway[s] Code in the aggregate principal amount of \$8,599,715,000."

11 The same Resolution contains the following "be it resolved" clause:

12
13 The Authority hereby requests the Committee to authorize issuance of
14 bonds and commercial paper notes under the Bond Act to provide funds
15 for the projects as authorized in sections 2704.04 and 2704.06 of the
16 California Streets and Highway[s] Code in the aggregate principal amount
17 of \$8,599,715,000. The Authority further requests the Committee to
18 authorize the issuance of refunding bonds under the Bond Act for the
19 purposes of refunding those bonds and commercial paper notes as the
20 Committee determines. The Executive Director is hereby authorized to
21 deliver to the Committee a copy of this Resolution and such other
22 materials and information as he deems appropriate to aid the Committee
23 in making determinations related to the bonds, and each officer of the
24 Authority is hereby authorized to do any and all things which he or she
25 may deem necessary or advisable in order to effectuate the purposes of
26 this Resolution. The Authority hereby approves and ratifies each and
27 every action taken by its officers, agents, members and employees prior to
28 the date hereof in furtherance of the purposes of this Resolution.¹⁴

22 The Finance Committee's Resolution IX (2013) contains the following introductory provisions:

23 WHEREAS, the Legislature of the State of California adopted the Safe,
24 Reliable High-Speed Passenger Train Bond Act for the 21st Century
25 (Statutes of 2008, Chapter 267; Proposition 1A) ("the "Act"), including
26 the State General Obligation Bond Law (Section 16720 et seq. of the
27 California Government Code) as incorporated therein; and

28 WHEREAS, the People of the State of California, at an election held on
November 4, 2008, approved the Act; and

¹⁴ See, Reed Declaration, Exhibit B (first page).

1 WHEREAS, one or more of the state agencies referred to in the Act (the
2 “Agencies”) are authorized to fund part or all of the costs of projects, as
3 authorized in the Act in Sections 2704.04 and 2704.06 of the California
4 Streets and Highways Code (the “Projects”), from interim, internally
5 borrowed funds subject to future reimbursement from proceeds of bonds
6 or commercial paper notes; and

7 WHEREAS, in response to requests from the Agencies, the Committee
8 has determined that it is necessary and desirable to authorize the issuance
9 hereunder of \$8,599,715,000 in principal amount (the “Authorized
10 Amount”) of general obligation bonds (the “Bonds”) and other
11 obligations pursuant to this Resolution to carry out the purposes specified
12 in Sections 2704.04 and 2704.06 of the California Streets and Highways
13 Code; and

14 WHEREAS, the State desires to have the option to issue general
15 obligation commercial paper notes pursuant to Section 16732.6. of the
16 California Government Code to carry out the purposes specified in
17 Sections 2704.04 and 2704.06 of the California Streets and Highways
18 Code (the “Original Notes”); and

19 WHEREAS, pursuant to Section 16731.6(b)(2) of the California
20 Government Code, the Committee has determined it is necessary and
21 desirable to authorize the issuance of commercial paper notes (the
22 “Refunding Notes”, together with the Original Notes the “Notes,” [sic]
23 and collectively with the Original Notes and the Bonds, the
24 “Obligations”) to pay the principal amount of Notes issued hereunder, and
25 such renewal and reissuance from time to time of the Notes shall be
26 deemed to be a refunding of the previously maturing amount, pursuant to
27 Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of
28 Division 4, title 2 of the California Government Code (the “Refunding
Law”);

[...]

NOW, THEREFORE, BE IT RESOLVED by the Committee to authorize
issuance of Obligations under the Act and this Resolution in a principal
amount not to exceed the Authorized Amount to carry out the purposes
set forth in Sections 2704.04 and 2704.06 of the California Streets and
Highways Code[...].¹⁵

Article II of the Finance Committee’s resolution, entitled “General Authorization”, contains the
following statement in Section 2.01, entitled “Authorization”¹⁶:

The Committee has examined the request and supporting statements for
the issuance of Obligations and has determined that it is necessary and

¹⁵ See, Palmertree Declaration, Exhibit B, pages 1-2.

¹⁶ See, Palmertree Declaration, Exhibit B, page 6.

1 desirable to authorize the issuance and sale of Obligations under the Act
2 to carry out the purposes set forth in Sections 2704.04 and 2704.06 of the
3 California Streets and Highways Code in an aggregate principal amount
4 not to exceed the Authorized Amount[...].

5 The Committee has further determined that all conditions, things and acts
6 required by law to exist, happen and be performed precedent to and in
7 connection with the issuance of the Obligations do exist, have happened
8 and have been performed in due time, form and manner as required by
9 law; and that this Committee is now empowered to issue and hereby
10 authorizes the issuance of Obligations.

11 In Article III, Section 3.01 of the Resolution, entitled “Authorization of Notes”, the Finance
12 Committee states its finding in subsection (a) that “...issuance of obligations under the Act...in the form
13 of commercial paper notes is necessary and desirable”, and states in subsection (b) that it “...further
14 determines that it is necessary and desirable to authorize the issuance of Refunding Notes...”.¹⁷

15 Article V of the Resolution, entitled “Authorization and Issuance of Bonds”, contains the
16 following statement in Section 5.01, entitled “General”:

17 The Committee finds and determines as stated in Section 2.01 that it is
18 necessary and desirable to issue the Bonds to carry out the purposes of the
19 Act as set forth in Sections 2704.04 and 2704.06 of the California Streets
20 and Highways Code.¹⁸

21 The Finance Committee’s Resolution X (2013) contains similar provisions regarding the necessity
22 and desirability of authorizing the issuance of bonds “...for the purpose of refunding from time to time the
23 Refundable Obligations at or prior to their respective stated maturity dates pursuant to the Refunding
24 Law”, including a statement that “[t]he Committee has examined the request and supporting documents
25 provided to the Committee, and has determined that it is necessary and desirable to authorize the issuance
26 and sale of Bonds...”.¹⁹

27 Discussion

28 The critical issue before the Court in this validation action is whether the Finance Committee’s
action authorizing the issuance of bonds under Proposition 1A complied with all legal requirements.

¹⁷ See, Palmertree Declaration, Exhibit B, page 7.

¹⁸ See, Palmertree Declaration, Exhibit B, page 13.

¹⁹ See, Palmertree Declaration, Exhibit C, pages 1 and 5.

1 Specifically, the Court’s inquiry focuses on the Finance Committee’s determination that it was necessary
2 and desirable to authorize the issuance of bonds as of March 18, 2013, the date of the authorizing
3 Resolutions.

4 As discussed above in relation to the applicable standard of review, one of the legal requirements
5 that is applicable to the Finance Committee’s determination, just as it is applicable to quasi-legislative
6 actions of administrative agencies in general, is that the determination must be supported by evidence in
7 the record. This requirement is essential in order to protect against administrative action that is merely
8 arbitrary or capricious.

9 In this case, the Court can find no evidence in the record of proceedings submitted by plaintiffs
10 that supports a determination that it was necessary or desirable to authorize the issuance of more than eight
11 billion dollars in bonds under Proposition 1A as of March 18, 2013. The record of proceedings in this
12 matter consists of little more than the Authority’s Resolution requesting that the Finance Committee
13 authorize issuance of bonds, and the Finance Committee’s Resolutions doing so. The Finance
14 Committee’s Resolutions contain bare findings of necessity and desirability which contain no explanations
15 of how, or on what basis, it made those findings. Specifically, the findings contain no summary of the
16 factors the Finance Committee considered and no description of the content of any documentary or other
17 evidence it may have received and considered. Thus the findings themselves do not assist the Court in
18 determining whether those findings are supported by any evidence.
19

20 Although the Authority’s Resolution contains a reference to “other materials and information” that
21 its Executive Director was authorized to deliver to the Finance Committee to aid it in making its
22 determination related to the bonds, and the Finance Committee’s Resolutions refer to “supporting
23 statements” connected with the Authority’s request, no such materials, information, or supporting
24 statements are included in the record of proceedings plaintiffs have presented to the Court for review. The
25 briefing memo delivered to Deputy Treasurer Katie Carroll, who acted on behalf of the State Treasurer at
26 the Finance Committee’s meeting, which could be described as supporting information, actually contains
27 nothing more than a summary of the meeting agenda. No other supporting information is identified or
28

1 available. Thus, the Court cannot determine whether the materials, information and supporting statements
2 referred to in the record, if they existed, contain evidence supporting the findings.

3 It is therefore not possible for the Court to determine, based on the record before it, that the
4 Finance Committee's action was supported by any evidence at the time it was made.

5 Plaintiffs argue that the Authority's request, in and of itself, constitutes sufficient evidence to
6 support the Finance Committee's action because it establishes the desirability (if not the necessity) of
7 issuing bonds for the high-speed rail project.²⁰

8 The Court is not persuaded by this argument. It is inconsistent with any real exercise of discretion
9 on the part of the Finance Committee. The fact that the Authority believed that the issuance of bonds for
10 high-speed rail was desirable on March 18, 2013 only establishes that the Authority believed this to be so.
11 It does not necessarily establish that issuance of the bonds at the time of the request actually was desirable
12 to the State government as a whole, or to the taxpaying public, which has an essential interest in the State's
13 finances.²¹ An agency that is specifically assigned the task of building a project, like the Authority in this
14 case, may have a very different view of what is desirable than the public officials who sit on the
15 authorizing committee, whose responsibilities include taking a view of the State's finances that is broader
16 than a single project.²² Some evidence other than the Authority's request is necessary to establish that the
17 Finance Committee actually exercised its discretion in deciding on that request, and did not merely accept
18 it without question.

19 This point is critical. Plaintiffs' argument that no additional evidence is necessary beyond a bare
20 request permits, if it does not actually promote, the abdication of discretion by the Finance Committee to
21 the Authority. Plaintiffs' argument also effectively insures that any such abdication of discretion would be
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24 ²⁰ See, plaintiffs' Reply Trial Brief, page 14:21-25. This argument was the primary focus of plaintiffs' oral
argument.

25 ²¹ As the portions of the Authority's Resolution that are quoted above demonstrate, the Authority did not explain why
26 it concluded that it was necessary or desirable to issue bonds at the time of its action.

27 ²² In this case, the members of the Finance Committee include the State Treasurer, the Director of the State
28 Department of Finance, the State Controller, the Secretary of Business, Transportation and Housing, and the
chairperson of the Authority. (See, Streets and Highways Code section 2704.12(a).) Clearly, four of the five
members of the Finance Committee have responsibilities that extend beyond the high-speed rail program.

1 unreviewable by the courts.

2 Such a result is clearly not what the State General Obligation Bond Law requires when it states
3 that the authorizing committee “shall determine the necessity or desirability” of issuing bonds.²³ Nor is it
4 what Proposition 1A specifically requires when it states -- even more strongly-- that the Finance
5 Committee (not the Authority) shall determine “**whether or not** it is necessary or desirable to issue
6 bonds”.²⁴ This specific language in Proposition 1A clearly gives the Finance Committee discretion to
7 deny a request by the Authority for authorization of bonds, and thus contemplates that such denial may
8 occur. The obvious implication of such language is that the voters, in approving Proposition 1A, intended
9 to empower the Finance Committee to serve as an independent decision-maker, protecting the interests of
10 taxpayers by acting as the ultimate “keeper of the checkbook”.²⁵ Treating the Authority’s request, by
11 itself, as sufficient evidence to support the Finance Committee’s action authorizing issuance of bonds
12 tends to negate the Finance Committee’s independent decision-making role in the process. The Court
13 cannot conclude that this is the result the voters intended.
14

15 The Court therefore concludes that the Agency’s request, by itself, is not evidence that supports
16 the Finance Committee’s action in this case.

17 Plaintiffs also have suggested that there are several other sources of evidence to support the
18 Finance Committee’s action. None of these suggestions are persuasive.

19 The first suggested source of evidence is the passage of Proposition 1A itself. Plaintiffs argue:
20 “The mere fact that the bonds were authorized to be issued for the purposes established in the Bond Act is
21 itself sufficient for the Committee to satisfy the requirements of Streets and Highways Code section
22 2704.13.”²⁶ This argument is unpersuasive for the same reasons as the previous argument regarding the
23 sufficiency of the Authority’s request. The passage of Proposition 1A may establish that the voters of this

24 ²³ See, Government Code section 16730.

25 ²⁴ See, Streets and Highways Code section 2704.13. (Emphasis added.)

26 ²⁵ This conclusion is fortified by the fact that the Voter Information Guide contained a fiscal effect analysis by the
27 Legislative Analyst advising the voters that paying off the principal and interest on the bonds could cost the General
28 Fund (and thus the taxpayers of the State) as much as \$19.4 billion over 30 years, at an average repayment rate of
\$647 million per year. (See, Howard Jarvis Taxpayers Association Request for Judicial Notice, Exhibit D, page 5.)

²⁶ See, plaintiffs’ Reply Trial Brief, page 14:15-17.

1 State deemed it desirable to build a high-speed rail system, and to issue bonds to finance construction of
2 that system, but it does not establish that the issuance of bonds at any particular time is necessary or
3 desirable. Again, this argument would permit the Finance Committee to abdicate its discretion in making
4 that specific determination, thus undermining its role as an independent decision-maker. The Court
5 therefore concludes that the passage of Proposition 1A, by itself, does not provide evidence sufficient to
6 support the Finance Committee's determination.

7 The second suggested source of evidence is the content of public comment on the proposed bond
8 issuance.²⁷ The record plaintiffs have submitted to the Court, however, only demonstrates that the
9 Authority (not the Finance Committee) received public comment at its March 18, 2013 meeting in which
10 "[s]peakers commented on a variety of topics."²⁸ On the other hand, the record does not show the content
11 of any public comments made at the Authority's meeting (or even whether such public comments actually
12 related to the bond issuance, which was not the only matter on the Authority's agenda that day). Although
13 the Meeting Notice and Agenda for the Finance Committee's March 18, 2013 meeting, which is part of the
14 record, contains an agenda item for "Public comment", plaintiffs have not offered any evidence to
15 demonstrate that the Finance Committee, as opposed to the Authority, actually received any public
16 comments at its meeting, let alone what the content of those comments may have been.²⁹ The additional
17 written comments the Court has received and considered as part of the record contain nothing regarding
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22 ²⁷ See, plaintiffs' Reply Trial Brief, page 14:25-27.

23 ²⁸ See, Board Meeting Minutes, plaintiffs' Reply Request for Judicial Notice, Exhibit A, first page.

24 ²⁹ Defendants John Tos, et al., have filed a Declaration of Kathy Hamilton, a reporter for the *Examiner*, which
25 generally describes the content of public comments at the Finance Committee's March 18, 2013 meeting. The
26 declaration includes an attached exhibit which purports to be an unofficial transcript of the public comment portion
27 of the meeting. Plaintiffs have not objected to the Hamilton Declaration or the attached exhibit. The Court has
28 concerns about the reliability and accuracy of the purported transcript, which was not prepared by an official
reporting service and which states at the outset that "[t]his is an attempt at a verbatim transcript". Even if it is
accepted as accurate, however, the purported transcript does not appear to provide evidence to support the Finance
Committee's determination that it was necessary and desirable to authorize the issuance of bonds as of March 18,
2013. Three of the four speakers spoke directly against the issuance of bonds, and the fourth spoke generally in favor
of high-speed rail, without addressing the specific issue of whether the issuance of bonds was necessary or desirable
at that time.

1 the necessity or desirability of authorizing the issuance of bonds at that time.³⁰ The Court therefore
2 concludes that public comments do not provide evidence sufficient to support the Finance Committee’s
3 determination.

4 The third suggested source of evidence is “supporting information [that] was also privileged” that
5 the Finance Committee received during a closed session of its March 18, 2013 meeting.³¹ None of this
6 “supporting information” is visible in the record. Plaintiffs provide no authority for the proposition that
7 privileged information, not available to the public, could provide the evidentiary support for a decision,
8 required to be made at a public hearing, authorizing the issuance of bonds. In any event, the Finance
9 Committee’s Meeting Notice and Agenda shows that a closed session was planned “to confer with legal
10 counsel, pursuant to Government Code Section 11126(e)(2)(C), regarding the possibility of initiating
11 litigation.”³² Based on this description, it appears most likely to the Court that what was discussed at this
12 closed session was not the desirability or necessity of issuing bonds, but rather the separate and distinct
13 issue of whether the present validation action should be filed. (This action was, in fact, filed on the
14 following day, March 19, 2013.) The Court therefore finds no basis upon which to conclude that
15 unspecified information received by the Finance Committee in a closed session in which possible litigation
16 was discussed provides evidence sufficient to support its determination.

17
18 The fourth suggested source of evidence is the expertise of the Finance Committee’s members in
19 relation to bond issuances in general and in relation to the high-speed rail project in particular.³³ That
20 expertise is unquestioned. Expertise, however, is not itself evidence. Rather, it is a tool for the evaluation
21 of evidence and thus a tool for rational decision-making based on evidence.³⁴ Where, as here, no evidence
22

23 ³⁰ Mr. Flashman’s letter opposed the issuance of bonds. Mr. Dayton’s e-mail addressed the term of maturity of any
24 bonds that would be issued, strongly objecting to a possible 40-year maturity term, without addressing the issue of
whether it was necessary or desirable to issue the bonds at that time.

25 ³¹ See, plaintiffs’ Reply Trial Brief, pages 14:27-15:3.

26 ³² See, Palmertree Declaration, Exhibit A, first page, item 4. The record does not contain minutes of the Finance
Committee’s meeting.

27 ³³ See, plaintiffs’ Reply Trial Brief, pages 15:6-17:2.

28 ³⁴ Indeed, it is a well-established principle that an expert’s opinion rendered without a reasoned explanation of why
the underlying facts lead to the ultimate conclusion has no evidentiary value in legal proceedings, because an expert’s
opinion is worth no more than the reasons and facts upon which it is based. (See, *Bushling v. Fremont Medical*

1 is visible on the record to support the determination of the experts, that determination must be seen as little
2 more than an unsupported opinion. Simply accepting that opinion on the basis that the decision-makers
3 are experts, as plaintiffs suggest, amounts to giving those decision-makers limitless and uncontrollable
4 discretion. In such a case, any real review for abuse of discretion, which is the duty of the courts with
5 regard to any quasi-legislative administrative action, becomes impossible. Even plaintiffs do not suggest
6 that the Finance Committee's discretion was limitless, uncontrollable and not subject to effective judicial
7 review. The Court therefore concludes that the expertise of the Finance Committee members, by itself,
8 does not provide evidence sufficient to support the Finance Committee's determination.

9
10 Based on the foregoing discussion, the Court concludes that the Finance Committee's
11 determination is not supported by evidence in the record and therefore cannot be validated. In reaching
12 this conclusion, the Court has not given any weight to the defendants' contentions that the issuance of
13 bonds as of March 18, 2013 was (or is now) unnecessary or undesirable. Similarly, the Court has not
14 given any weight to the evidence defendants have submitted to support those contentions. The issue
15 before the Court in this validation proceeding is strictly limited to whether the Finance Committee's
16 determination that issuance of bonds was necessary and desirable as of March 18, 2013 is supported by
17 any evidence in the record. It is solely the lack of any such supporting evidence that compels the Court's
18 conclusion that a validation judgment must be denied on the existing record.

19 **Conclusion**

20 Plaintiffs argue that there are no validation cases specifically reviewing a finance committee's
21 determination that a bond issuance is desirable.³⁵ This appears to be true, but essentially irrelevant. A
22 court has the authority to decline to validate legislative action authorizing the issuance of bonds where
23 such action did not comply with applicable legal requirements. (See, for example, *Pension Obligation*
24 *Bond Committee v. All Persons, etc.* (2007) 152 Cal. App. 4th 1386, in which the Third District Court of
25 Appeal upheld the trial court's denial of a validation judgment where the Legislature authorized the

26
27 *Center* (2004) 117 Cal. App. 4th 493, 510; *Kelley v. Trunk* (1998) 66 Cal. App. 4th 519, 524.) In other words, an
expert opinion must be grounded in evidence in order to be valid as evidence itself.

28 ³⁵ See, plaintiffs' Reply Trial Brief, page 13:16-17.

1 issuance of bonds in an amount over the threshold set forth in Article XVI, Section 1 of the State
2 Constitution without the authorizing Bond Act being approved by a 2/3 vote of the Legislature or a
3 majority vote of the people.)

4 This Court therefore has the authority to deny a validation judgment where it can be shown that
5 the quasi-legislative administrative action authorizing issuance of bonds did not comply with an essential
6 legal requirement. In this case, the essential legal requirement was that the quasi-legislative administrative
7 action be supported by evidence in the record. The Court has found this requirement to be critical in view
8 of the Finance Committee's role as the ultimate decision-maker on a matter of significant fiscal impact.

9 For the reasons stated above, and even applying the deferential standard of review applicable to
10 quasi-legislative actions of administrative agencies, the Court concludes that the Finance Committee's
11 determination that it was "necessary and desirable" to authorize the issuance of bonds to finance
12 construction of the high-speed rail project as of March 18, 2013 is not supported by any evidence in the
13 record, and therefore did not comply with an essential legal requirement. On that basis, the Court denies
14 plaintiffs the relief they seek in their Complaint for Validation.
15

16 Because this ruling disposes of the validation action, the Court finds it unnecessary to address or
17 resolve any of the other arguments raised by the defendants in opposition to the complaint.

18 Counsel for defendants John Tos, et al., is directed to prepare a judgment denying relief on the
19 Complaint for Validation, submit it to all other counsel for approval as to form in accordance with Rule of
20 Court 3.1312(a); and thereafter submit the judgment to the Court for signature and entry in accordance
21 with Rule of Court 3.1312(b).
22
23

24 DATED: November 25, 2013

25 _____
26 Judge MICHAEL P. KENNY
27 Superior Court of California,
28 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 or by email 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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Dated: November 25, 2013

Superior Court of California,
County of Sacramento

By: S. LEE
Deputy Clerk