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Transportation Solutions Defense and Education Fund

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

TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, Petitioner vs. CALIFORNIA AIR RESOURCES BOARD, an agency of the State of California, and DOES 1-10, inclusive, Respondents	No. 34-2014-80001974-CU-WM-GDS Action under the California Environmental Quality Act Assigned for all purposes to Hon. Shelleyanne W. L. Chang, Dept. 24 PETITIONER'S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DECLARATION OF AUTHENTICITY

Pursuant to Evidence Code § 452(c), Petitioner Transportation Solutions Defense and Education Fund requests that the Court take judicial notice of Portions of the Revised 2012 Business Plan of the California High-Speed Rail Authority ("CHSRA"), as approved by CHSRA in April of 2012. The portions of the Business Plan for which judicial notice is requested are attached hereto as Exhibit A.

DATE: February 22, 2017

Stuart M. Flashman
Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

A. THE DOCUMENT IS ENTITLED TO JUDICIAL NOTICE.

Under Evidence Code §452(c), courts may take judicial notice of official acts of the legislative, judicial, and executive departments of any state of the United States, including California. The Revised 2012 Business Plan is an official act of the California High-Speed Rail Authority, which is a component of the State Transportation Agency within the executive branch of the State of California. For this reason, it is entitled to judicial notice.

Further, not only was the Revised 2012 Business Plan approved well before ARB approved its 2014 Updated Scoping Plan, but it is specifically referenced in Appendix B to the 2014 Updated Scoping Plan, Status of Scoping Plan Measures. (27 AR 14771, 14782 [discussion of revised timeline for implementation of high-speed rail system and adoption of "blended system" concept].) While perhaps the Revised 2012 Business Plan should have been included in the administrative record, that record clearly shows that the Revised Business Plan was before ARB when it approved the Updated Scoping Plan. (See also, 21 AR 11663 [CHSRA June 2013 report of high-speed rail's contribution to GHG emission reduction – noting Revised 2012 Business Plan's introduction of the blended system].) Thus, the document easily satisfies the test identified in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573 fn.4 for taking judicial notice of a document in traditional mandamus review of an agency's quasi-legislative decision.

B. THE DOCUMENT IS RELEVANT TO AN ISSUE BEFORE THE COURT.

In addition to being subject to judicial notice, a document must be relevant to an issue before the court in order to be granted judicial notice. The Revised 2012 Business Plan, and specifically the excerpts for which judicial notice is requested, is relevant to the issue of whether changed circumstances required ARB to reopen its environmental review of the high-speed rail project as a recommended measure in the Updated Scoping Plan. The Revised Business Plan included a revised timeline for implementation of the high-speed rail system that is significantly delayed compared to the timeline that was before ARB when it approved the 2008 Scoping Plan.

In particular, the Revised 2012 Business Plan showed that the high-speed rail system was not planned begin to carrying passengers until 2022, well past AB 32's 2020 deadline for reducing GHG emissions. (Exhibit A at pp. ES-13 [implementation schedule], ES-14 [construction schedule], ES-15 [completion dates for segments], 2-28 [environmental review schedule], 2-29 to 2-30 [discussion of business plan schedule].) The Revised 2012 Business Plan also showed that CHSRA had revised its planned implementation so that by 2029 it would only have completed a blended Phase I project between San Francisco and Los Angeles, with Caltrain and high-speed rail trains sharing track between San Francisco and San Jose and without full high-speed rail service between Los Angeles and Anaheim. These changes would affect system ridership, and consequently the amount of GHG emissions reduction that could be expected. (See, 57 AR 32347 [graph showing different GHG emissions "payback periods" with different ridership estimates].)

CONCLUSION

The document for which judicial notice is requested is subject to judicial notice, and is highly relevant to issues that are before the Court. Judicial notice should therefore be granted.

Date: February 22, 2017

Respectfully submitted,

Stuart M. Flashman
Attorney for Petitioner
Transportation Solutions Defense
and Education Fund

DECLARATION OF AUTHENTICITY

I, Stuart M. Flashman, hereby declare as follows:

1. I am an attorney licensed to practice in the State of California. I represent Petitioner Transportation Solutions Defense and Education Fund in this case. I have personal knowledge of the facts presented in this declaration and am competent to testify as to them if called as a witness.

2. Exhibit A attached hereto is a true and correct copy of portions of the Revised 2012 Business Plan as approved by the California High-Speed Rail Authority, as downloaded directly from the California High-Speed Rail Authority's official website.

I declare under penalty of perjury under the laws of the State of California that the statements made in this declaration are true and correct. Executed on this twenty-second day of February, 2017 in Oakland, California.

Stuart M. Flashman

Exhibit A

California High-Speed Rail Program Revised 2012 Business Plan

APRIL 2012

Building California's Future

Phased implementation provides two additional benefits with respect to project funding and finance:

- The funding required to advance any individual section is significantly less than if the system were to be constructed all at once.
- Risk is reduced for each subsequent section because of the successful performance of HSR operations on prior sections. In this way, success feeds on success and enhances the ability to attract private capital and operating expertise.

Exhibit ES-3. Summary of each phased implementation section

Section	Length (approx)	Endpoints	Service Description	Service Start	Cumulative Cost (YOE$, billions)
Initial Operating Section	300 miles	Merced to San Fernando Valley	• One-seat ride from Merced to San Fernando Valley • Closes north-south intercity rail gap, connecting Bakersfield and Palmdale and then into Los Angeles Basin • Begins with construction of up to 130 miles of HSR track and structures in Central Valley • Private sector operator • Ridership and revenues sufficient to attract private capital for expansion • Connects with enhanced regional/local rail for blended operations, with common ticketing	2022	$31
Bay to Basin	410 miles	San Jose and Merced to San Fernando Valley	• One-seat ride between San Francisco and San Fernando Valley[1] • Shared use of electrified/upgraded Caltrain corridor between San Jose and San Francisco Transbay Transit Center • First HSR service to connect the San Francisco Bay Area with the Los Angeles Basin	2026	$51
Phase 1 Blended	520 miles	San Francisco to Los Angeles/ Anaheim	• One-seat ride between San Francisco and Los Angeles[1] • Dedicated HSR infrastructure between San Jose and Los Angeles Union Station • Shared use of electrified/upgraded Caltrain corridor between San Jose and San Francisco Transbay Transit Center • Upgraded Metrolink corridor from LA to Anaheim	2029	$68

[1] One-seat ride means that passengers do not need to switch trains, even if the train operates over two systems (e.g., moving north on dedicated high speed rail infrastructure and then moving onto Caltrain tracks at San Jose, assuming electrification of Caltrain corridor by 2020 as proposed by Caltrain)

Funding for the initial construction of the IOS will be a combination of federal funding and Proposition 1A funding. As the program proceeds, the state will continue to see significant federal support and private-sector capital investment once operations have commenced. Cap and trade funds are available, as needed, upon appropriation, as a backstop against federal and local support.

Planning scenario

This Revised Plan includes a planning scenario for use in projecting performance of the system. In order to generate key performance data, this planning scenario includes several basic assumptions regarding the Bay-to-Basin and Phase 1 Blended operating sections:

- The system will be completed by 2028.
- The average ticket fare between San Francisco and Los Angeles will be $81 (83 percent of anticipated airline ticket prices) in 2010 dollars, with up to eight trains per hour during the peak period (four trains per hour from San Francisco, two trains per hour from San Jose, and two trains per hour from Merced).

For this Revised Plan, a planning schedule (Exhibit ES-4) was adopted that extended the date for completion of Phase 1 Blended from 2020 to 2028 to mitigate funding and other risks. Based on this schedule, costs have been inflated to assess the total costs in the year-of-expenditure.

Exhibit ES-4. Construction schedule

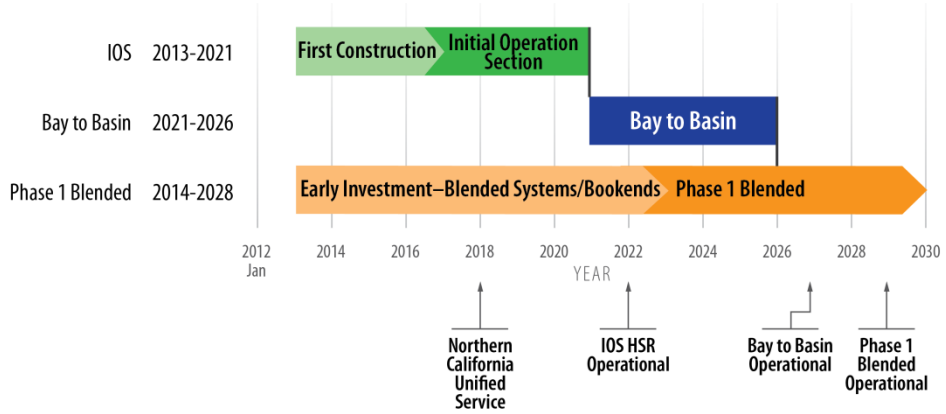


Exhibit ES-5 presents a planning case showing the impact of a 2028 schedule on year-of-expenditure cost.

If required, a Full Build option for Phase 1 could be completed by 2033 at an incremental cost of $23 billion in year-of-expenditure dollars, for a cumulative cost of $91.4 billion.

Exhibit ES-5. Planning case showing impact of planning schedule on year-of-expenditure cost

Section	Incremental Capital Cost (billions 2011$)	Cumulative Capital Cost (billions 2011$)	Completion of Section	Incremental Year-of-Expenditure Capital Cost	Cumulative Year-of-Expenditure Capital Cost
IOS	26.9	26.9	2021	31.3	31.3
Bay to Basin	14.4	41.3	2026	19.9	51.2
Phase 1 Blended	12.1	53.4	2028	17.2	68.4

Ridership and revenue

As is the case with any similar program, the forecasts of ridership and revenue continue to be the subject of extensive and intense review. Areas of focus include the model used to generate the forecasts, the assumptions and data used as inputs to the model, and the outcomes of the model. A number of steps have been taken to respond to comments and to continue to improve the reliability of the forecasts, and they are reflected in this Revised Plan. Those steps include the following:

- Inputs to the model have been updated and refined to use recent data reflect a broader range of scenarios.
- An independent panel of experts continues to review the model and its inputs.
- Post-model adjustments have been eliminated to reduce the potential for error, bias, or inconsistency.
- The model itself has been tested against actual conditions and external forecasts and demonstrated its reliability.
- Data and reports have been made available for public review.

Details of these actions are provided in Chapter 5, Ridership and Revenue. An important step forward to demonstrate the viability of the model and the reliability of its outputs was the use of it to test actual conditions in the Northeast Corridor. This test demonstrated the sensitivity of the model to inputs and the reasonableness of the outcomes.

Another important aspect to consider is the performance of both domestic and international rail systems against their forecasts. Studies have been conducted on toll roads, high-speed rail systems, and quasi-high-speed rail systems. One of the most widely cited is a 2003 Cambridge University report titled *Megaprojects and Risk* by Flyvbjerg, et al. This report found that a common element in projects that failed to reach forecast results was an optimistic assumption of a particular event that would lead to higher ridership. For example, ridership forecasts for the French TGV system assumed significant spikes in motor fuel prices, which would cause more people to leave their cars and use high-speed rail. When the anticipated increase in prices did not occur, ridership did not materialize as projected.

comment period closed on these documents on October 13, 2011. Preparation of the Merced–Fresno Final EIR/EIS is underway and is scheduled for release in April 16012, with certification by the Authority anticipated in May 2012 and issuance of a Record of Decision by the Federal Railroad Administration in June 2012. The Fresno-to-Bakersfield section is being updated for recirculation as a Revised Draft EIR/EIS in June 2012 based on a request from the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers to analyze a new alignment west of Hanford. The Final EIR/EIS is scheduled for certification in December 2012 with the issuance of the Record of Decision anticipated in January 2013. The start of construction is expected to in early 2013 with the issuance of a Notice to Proceed for the first construction segment. Completion of construction on these two segments is expected in mid-2017.

Exhibit 2-6. Projected milestones for completing the environmental review process/potential construction completion

High-speed Rail Section	Release Draft EIR/EIS	Adopt Final EIR/EIS	Receive Record of Decision	Complete Construction
Merced–Fresno (ARRA)	August 2011	June 2012	June 2012	2021
Fresno–Bakersfield (ARRA)	May 2012	November 2012	December 2012	2017
San Francisco–San Jose	February 2014	October 2014	December 2014	2028
San Jose–Merced	February 2013	October 2013	December 2013	2026
Bakersfield–Palmdale	May 2013	December 2013	February 2014	2021
Palmdale–Los Angeles	February 2013	September 2013	October 2013	2028
Los Angeles–Anaheim	February 2014	September 2014	December 2014	TBD
Merced–Sacramento (Phase 2)	TBD	TBD	TBD	TBD
Los Angeles–San Diego (Phase 2)	TBD	TBD	TBD	TBD

Note: Construction completion schedule is based on the business planning schedule described below.

Environmental review process

Information on the schedule and status of the environmental review process can be found on the Authority's website at www.cahighspeedrail.ca.gov/environmental_review.aspx

Business planning schedule

Introduction

California's HSR system will be implemented in phases to manage the development process, costs, and funding. The system will be developed over a long period of time, and many future decisions will need to be made regarding alignment and profile (i.e., surface, elevated, and tunnel), environmental mitigations, and sequencing, among others.

This Revised Plan does not attempt to evaluate all possible options presented in the system's environmental documents. Rather, the Authority identified a set of system development scenarios to illustrate a range of potential project phasing and other outcomes so that current policy leaders can assess the program and make appropriate near-term decisions. This section identifies the assumed project development schedule, which serves as the basis for the financial analysis conducted for this Revised Plan.

It is important to note that this project development schedule is illustrative and will depend on future decisions, the availability of funds, and other factors. The schedule does not represent or suggest decisions of the Authority's Board of Directors or other decision-makers, nor does it represent recommendations of Authority staff.

Project schedule

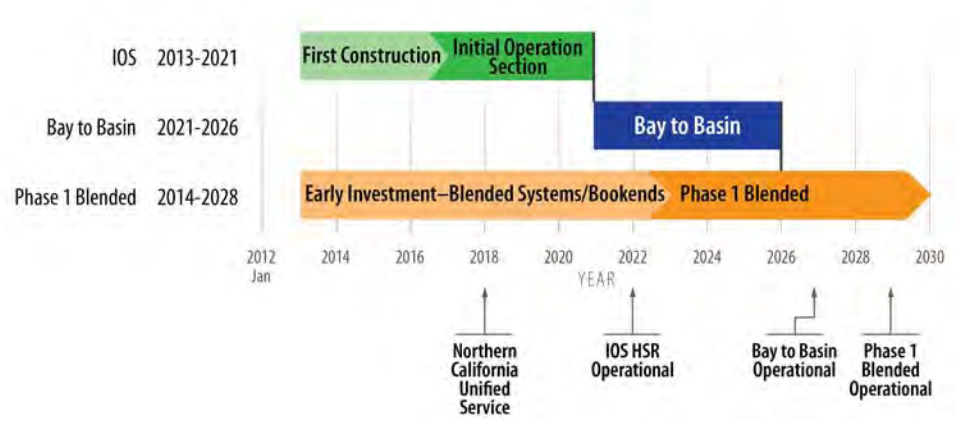
If substantially all of the project budget were available to allow multiple major contracts to begin simultaneously, and if there were no significant environmental document delays, the Phase 1 system from San Francisco to Los Angeles/Anaheim could be completed in approximately 12 years (by 2024). This represents a *financially unconstrained* schedule. However, this unconstrained schedule presents an unrealistic view of the likely project development schedule.

A more realistic phased implementation schedule shows how the system could be implemented over time and results in a fully operational segment (the IOS) by 2021; the Bay to Basin in 2026; and Phase 1 Blended by 2028. Early investments would begin along with the first IOS segment and be made over the course of the Phase 1 Blended time frame.

This project-development schedule was used as a basis to inflate capital costs, revenues, and operating and maintenance costs to a year of expenditure. After 2015, a standard inflation rate of 3 percent is used throughout this Revised Plan. In the near term, inflation is based on projected rates, as detailed in Chapter 7, Financial Analysis and Funding.

The schedule for completing the various development sections is shown in Exhibit 2-7. The schedule identifies a construction timeline for each section, as well as the year in which operations could commence by section. This schedule is also illustrated in other chapters.

Exhibit 2-7. Schedule by section



The financial plan assumes that self-sufficient operating sections that do not require operating subsidies would be opened for passenger service beginning in 2022 after construction of the IOS is complete. This will be followed by construction of the remainder of the alignment needed to provide full service from San Jose to the San Fernando Valley (Bay to Basin), which is estimated to be opened for service in 2027. The Phase 1 Blended system is estimated to be opened in 2029. As previously discussed, incremental blended system improvements between San Francisco and San Jose and between San Fernando and Anaheim will be made during every phase of HSR construction.

This schedule is used throughout this Revised Plan and is the basis for revenue, cost, and funding analyses.

California's experience with major infrastructure programs

The California highway and freeway system

Significant similarities exist between development of California's world-famous freeway system and the statewide HSR system. California's current 50,000 miles of highways and freeways began with an initial bond issuance of $18 million in 1909, with another in 1919, after funding had been exhausted. Demonstrating leadership, California approved initial funding for the current freeway system in 1947, a decade before the federal government established the National Defense and Interstate Highway System. Since then, California has spent well over half a century building the system, bringing new sections, often not contiguous, based on factors such as funding and environmental clearance. Interstate 5 is a particularly interesting comparison to the HSR system as it covers 796 miles and forms one of the most critical backbones of the state's highway system. From its designation as a key highway in 1947, phased implementation of Interstate 5 was not completed until October 12, 1979. Exhibit 2-8 illustrates the phased implementation and progress in building Interstate 5 through the Central Valley.