IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

CALIFORNIA HIGH-SPEED RAIL AUTHORITY, et al., Petitioners, **v.** **THE SUPERIOR COURT OF SACRAMENTO COUNTY,** Respondent, **JOHN TOS, et al.,** Real Parties in Interest.	Case No. C075668

Sacramento County Superior Court
Case Nos. 34-2011-00113919CUMCGDS, 34-2013-00140689CUMCGDS
The Honorable Michael P. Kenny, Judge

PETITIONERS' REPLY IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT OF MANDATE

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INTRODUCTION

Real Parties filed five responses to the Petition.[1] None of these responses undermine Petitioners' arguments that this Court should reverse the trial court's decisions in *High-Speed Rail Authority v. All Persons Interested* (the "Validation Action") and *Tos v. High-Speed Rail Authority* ("*Tos*"), Sacramento Superior Court Case Nos. 34-2011-00113919, 34-2013-00140689.[2] Petitioners respectfully submit that the Court should grant the relief requested and allow the Authority to take the steps necessary to begin building California's historic high-speed rail system as intended by the Legislature and the voters.

ARGUMENT

I. JUDGMENT SHOULD BE ENTERED VALIDATING ISSUANCE OF THE HIGH-SPEED RAIL BONDS.

The Petition contends that the trial court should have entered a judgment validating issuance of the bonds because the Committee followed all the procedures required by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, codified at Streets and Highways Code section 2704 et seq. (the "Bond Act"), the General Obligation Bond Law, and the validation statutes. Addressing the trial court's specific error, Petitioners argued that the Committee's determination that bond issuance

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[1] Responses to the Petition were filed by John Tos et al. ("Tos Return"), Kings County Water District et al. ("Water District Return"), First Free Will Baptist Church ("Church Return"), Howard Jarvis Taxpayers Assn. ("Howard Jarvis Return"), and Union Pacific Railroad Company ("Union Pacific Opposition").

[2] Petitioners are the Governor, the Treasurer, the Director of the Department of Finance, the Secretary of the State Transportation Agency, the High-Speed Rail Authority ("Authority"), and the High-Speed Passenger Train Finance Committee ("Committee").

was "necessary and desirable" is not subject to judicial review, and even if it were, the record was sufficient to support the Committee's determination. In response, Real Parties fail to distinguish cases holding that in reviewing agency action, a court does not review an agency's determination that its action is necessary or desirable. In addition, Real Parties argue that the uses to which the Authority intends to put the proceeds of bond sales are invalid, even though the Validation Action is limited to determining the validity of bond issuance. Arguments about uses of bond proceeds are irrelevant; they do not establish that the Committee's authorization of bonds was invalid.

A. A Finance Committee's Determination That Issuance of Bonds Is "Necessary or Desirable" Is Not Reviewable.

Petitioners do not contend, contrary to Real Parties' mischaracterization, that a finance committee's authorization of bonds is immune from judicial review. (Tos Return, p. 26; Howard Jarvis Return, p. 4.) Rather, Petitioners explained that, although there are other aspects of a decision to authorize bonds that are reviewable, a finance committee's determination that issuance of bonds is "necessary or desirable" is not. (See *Perez v. Board of Police Com'rs of City of Los Angeles* (1947) 78 Cal.App.2d 638, 643 ["[t]hat the board deemed the rule desirable is evidenced conclusively by its adoption"]; *City of Monrovia v. Black* (1928) 88 Cal.App. 686, 690 ["In the absence of any such requirement in the statute, the determination of the legislative body that the fact exists on which their power to act depends is sufficiently indicated by their proceeding to act."].)[3]

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[3] Real Parties contend that *City of Monrovia v. Black, supra,* is off point because it involved an absence of findings rather than an absence of evidence. (See Tos Return, p. 29.) But the two go hand in hand. There,

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Boelts v. City of Lake Forest (2005) 127 Cal.App.4th 116, draws a clear distinction between findings of fact, which are subject to substantial evidence review, and findings of desirability, which are not. In a reverse validation action challenging a redevelopment plan amendment, the court of appeal held that the community redevelopment laws required the amendment to satisfy certain "substantive requirements." (*Id.* at p. 128; see also Health & Saf. Code, §§ 33457.1, 33367.) In particular, a statute required a factual finding that the project area was blighted, and required the legislative body's finding to be "based on clearly articulated and documented evidence." (Health & Saf. Code, § 33367, subd. (d).) It was these factual findings that were subject to the substantial evidence standard of review. (*Boelts v. City of Lake Forest*, *supra*, 127 Cal.App.4th at pp. 134-135.) In contrast, the statutory requirement that an amendment to a redevelopment plan be "necessary or desirable," was "procedural" and not subject to any kind of judicial review. (*Id.* at p. 128 & fn. 13.)

Without distinguishing these authorities, Real Parties insist that the Committee's determination of desirability must be subject to judicial review by a court, as if it were a factual finding that could be reviewed for substantial evidence. (Tos Return at p. 27 [arguing that the Committee's action is subject to review for substantial evidence, "[r]egardless of whether the Committee's determination is considered administrative or quasi-legislative"]; *id.* at p. 28 [arguing that "even ministerial decisions, such as

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(...continued)
the court ordered the city clerk to take steps required to issue the bonds. (88 Cal.App. at p. 691.) There were no findings in the record and no evidence. Neither omission was relevant because the determination of the legislative body of the fact on which their power to issue depended was sufficiently indicated by the simple fact that it had acted. (*Id.* at p. 690.)

issuing a building permit," are subject to review to ensure they are not arbitrary and capricious].) Real Parties are wrong.

In arguing otherwise, Real Parties rely on *Poway Royal Mobilehome Owners Ass'n v. City of Poway* (2007) 149 Cal.App.4th 1460, but that case does not help them. (See Tos Return, p. 27; Howard Jarvis Return, pp. 5-6; Church Return, pp. 14, 24-26.) In *Poway*, the substantial evidence standard of review applied because in order to issue tax-exempt bonds, federal law required a public hearing and the taking of evidence. (*Id.* at pp. 1466, 1481-1482.) The court applied the substantial evidence standard of review, holding that the hearing to consider the tax-exempt status of the bonds was inadequate because, among other things, the City misrepresented its financing plan in the bond resolutions themselves, and there was no evidence that "it brought forth or discussed any information on the provision of low-income housing at the Park, a critical element in maintenance of the tax-free status of the bonds," as required by federal law. (*Id.* at pp. 1485-1487.) The court in *Poway* did not review a finding that issuance of bonds was "necessary or desirable" under the substantial evidence standard, or at all. It therefore does not support Real Parties' argument that every aspect of bond authorization is a factual inquiry subject to review by the courts.[4]

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[4] There is no single standard of review in a validation action; the standard of review employed depends on the arguments raised in opposition to validation. (See *California Family Bioethics Council v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319, 1338 [reviewing validation judgment de novo because challenges presented questions of constitutional law]; *Franklin-McKinley School Dist. v. City of San Jose* (1991) 234 Cal.App.3d 1599, 1603 [observing in review of validation judgment that "[w]e review proceedings arising under the Community Redevelopment Law in accordance with the substantial evidence rule"].)

B. Bond Issuance Can Only Be Challenged in a Validation Proceeding, Not By Mandamus.

Real Parties mistakenly argue that the Committee's determination is reviewable under a substantial evidence standard, as if the Validation Action were an ordinary mandamus proceeding reviewing a quasi-legislative act. (Tos Return, pp. 26-29; Howard Jarvis Return, pp. 5-6; Church Return, pp. 24-26.) As a threshold matter, an action to validate bonds is not a mandamus proceeding, and cannot be brought as a mandamus proceeding. (See *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1165-1170 [holding that challenge to issuance of bonds, no matter how alleged, is governed by the validation statutes]; *Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1033-1034 [holding that where validation laws apply they are mandatory].) A challenge to issuance of bonds must be resolved in an in rem proceeding that determines the marketability of bonds, i.e., whether the finance committee's issuance of the bonds was valid, and the bonds are therefore legally binding obligations of the State. (Code Civ. Proc., § 860 et seq.; Gov. Code, § 17700.)

A validation proceeding tests the validity of a particular act, which is limited by the complaint. (See *In re Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 835 [noting that allegations of state agency's timely compliance with all applicable federal environmental laws did not put in issue compliance with laws under which the agency had no compliance obligation, and only put its own compliance in issue, not those of other agencies].) In this case, the complaint sought only to validate the Committee's issuance of the bonds for any purpose authorized by the Bond

Act. (Tab 189.[5]) Accordingly, the inquiry in this case should have been limited to determining three questions: (1) whether there was legal authorization for the bonds, i.e., a constitutionally valid bond act; (2) whether the finance committee was delegated the legislative authority to issue the bonds; and (3) whether the Committee carried out the procedural requirements for issuance in the Bond Act and the General Obligation Bond Law.

All these criteria were met, and Real Parties have not argued otherwise. Nothing in the Bond Act explicitly or implicitly requires the Committee to muster evidence or explain the reasons for its determination that issuing bonds is necessary or desirable. "Substantial evidence" is shorthand for a *standard of review* used to review factual findings in mandamus proceedings, it is *not*, as the trial court held, an "essential legal requirement" (Tab 1, HSR00031) found anywhere in the Bond Act, or for that matter in the General Obligation Bond Law or the Bagley-Keene Open Meeting Act.

Even if this were a mandamus proceeding, the court of appeal's decision in *Perez v. Board of Police Commissioners*, *supra*, would dispose of Real Parties' argument. That case holds clearly and succinctly: where a public body is authorized to do what it deems "necessary and desirable," whether an action taken under that grant of authority is in fact "necessary or desirable" is "*not a judicial question.*" (78 Cal.App.2d at p. 643, italics added.) In addressing *Perez*, Real Parties simply ignore this holding.

The Bond Act does not require a hearing or evidentiary findings. Accordingly, Real Parties' arguments that rely on the standard of review that applies when a hearing and evidentiary findings are required by statute

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[5] All citations to Tab numbers are to the Appendix of Exhibits, lodged January 24, 2014.

(see *Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339, 359, fn. 22), and cases speaking to review under Code of Civil Procedure section 1094.5, do not apply here. (See, e.g., Howard Jarvis Return, pp. 2-3, citing *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144 & fn. 11, *Bedoe v. County of San Diego* (2013) 215 Cal.App.4th 56, 60, and *Morgan v. Community Redevelopment Agency* (1991) 231 Cal.App.3d 243, 258-259; Tos Return, pp. 27, 32, citing *Western States Petroleum Assn. v Superior Court* (1995) 9 Cal.4th 559, 573; Church Return, pp. 25-27, citing *McGill v. Regents of the University of California* (1996) 44 Cal.App.4th 1776, 1779.)

Real Parties insist the Committee's determination must be subject to review for substantial evidence because it is tasked with deciding whether "*or not*" it would be necessary or desirable to authorize issuance of bonds and, if so, the "amount" to be authorized. (See Tos Return, p. 30; Howard Jarvis Return, p. 2.) But this is grasping at straws. If it omitted the words "or not," the statute would have the same meaning and significance. The term "whether" necessarily means "whether or not."[6] These terms only serve to illustrate the scope of the Committee's discretion. Standing alone, the fact that the Committee has the discretion to find that it is *not* desirable to authorize bonds does not make its determination subject to judicial review.

Finally, Real Parties argue that if the Committee's determination were wholly discretionary, then the Legislature's enactment of Streets and Highways Code section 2704.13 would have been an "idle act." (See Tos Return, p. 30.) It would not. The Committee is comprised of

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[6] "Or not" is redundant of "whether," except when it modifies a verb (e.g., "we will play ball, whether or not it rains") or is used to mean the equivalent of "regardless of whether" (B. Garner, Garner's Modern American Usage (2002) at p. 422), neither of which is the case here.

independently elected and appointed officials with public finance expertise. Whereas the Authority has expertise to accomplish the project, the Committee was appropriately given the discretion to control the *timing* for authorizing issuance of the bonds. (See, e.g., Sts. & Hy. Code, § 2704.13; Declaration of Blake Fowler, filed January 24, 2014 ("Fowler Decl.").) The procedural requirement clearly has a purpose, but whether issuing bonds is "desirable" is left to the Committee's discretion.

C. Even If Evidence Were Required to Support the Committee's Determination, the Committee Had Sufficient Evidence Before It.

Even if the trial court were correct that there must be evidence to support the Committee's determination of desirability, it erred in concluding that there was *no* such evidence, or that the evidence was insufficient. Real Parties essentially concede this point. (See Tos Return, p. 32 ["no evidence, *other that* [sic] the bare resolutions, was presented to the Committee in open session," italics added]; Howard Jarvis Return, p. 3 ["the Finance Committee considered no evidence *other than* the Rail Authority's bare request", italics added].) What the trial court and Real Parties really contend is that the Committee needed *more* evidence of some kind and in some amount. But this requirement is not found in the Bond Act; under the terms of the Bond Act, the Committee had all the evidence it needed to authorize the bonds: the Bond Act itself, which declares the high-speed rail system to be in the public interest, and the Authority's request for issuance of the bonds for purposes authorized in the Bond Act.

Real Parties argue, without support, that the Committee should have taken more time to deliberate before authorizing issuance, and should have articulated the evidence it considered, to assure the voters (and the courts) that it did not act "pro forma" or as a "rubber stamp" for the Authority. (See Tos Return, pp. 26, 30; Howard Jarvis Return, p. 4.) But the

Committee need not consider anything more than the Authority's valid request, because the Bond Act requires no more. (Sts. & Hy. Code, §§ 2704.11, subd. (a), incorporating Gov. Code, § 16730 ["Upon request of the board, supported as required in the bond act, the committee shall determine the necessity or desirability . . . of issuing any bonds authorized to be issued"], 2704.13 [omitting technical or evidentiary standards for authorization].) Thus, Real Parties incorrectly characterize this request as "bare." (See Tos Return, pp. 29-30, 32; Howard Jarvis Return, p. 3.) The request contained all the evidence the Committee needed to authorize bonds for validation—the Authority requested the authorization of bonds *as authorized by the Bond Act and only for purposes authorized by the Bond Act*. (Tab 109, HSR02048.) In contrast, if the Authority had asked the Committee to issue the bonds for some purpose other than one authorized by the Bond Act, for example, to build a freeway, that request would not have complied with the Bond Act, and would not have been sufficient to permit the Committee to issue bonds.

The Committee also had before it a draft resolution detailing the authorization of the bonds and the structure of the future sales, including that the amount of bonds sold would not exceed the appropriation authorized by the Legislature. (Tab 108, HSR01961 ["determin[ing] that it is necessary and desirable to authorize the issuance and sale of [bonds] . . . provided further that the principal amount of [bonds] other than Refunding Notes issued and sold shall not exceed the appropriation authorized by the Legislature as required by the Act"].)[7] Thus, the Committee was aware the balance of the bonds could not actually be sold until the Legislature had

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[7] It is worth noting that in *Poway Royal Mobilehome Owners Ass'n v. City of Poway, supra*, on which Real Parties rely, the court relied on the City's bond resolutions as evidence. (149 Cal.App.4th 1460, 1483-1485.)

authorized a corresponding appropriation. This information was sufficient both for the Committee to make its determination and for a court to be satisfied that the Committee validly authorized the bonds.

The Committee also held a closed session to discuss initiating litigation. (Tab 108, HSR01953.) Real Parties contend the closed session could only have considered potential litigation and not evidence relating to the necessity or desirability of authorizing bond issuance. (See Tos Return, p. 32.) But the desirability of issuing bonds and the reasons for seeking a validation judgment are closely intertwined, particularly for contentious projects like high-speed rail. If an agency is facing litigation, it is advantageous to authorize issuance and validate all the bonds authorized by the bond act at once (i.e., for all purposes authorized by the bond act without validating any particular use of proceeds), rather than to file a new validation action each time additional bonds are authorized for a particular purpose, and subject the project to further and repetitive delays with each issuance. (See, e.g., Fowler Decl., ¶ 8 [describing instances in which finance committee has authorized the full amount of bonds].) Consequently, if in the judgment of the finance committee, a validation action should be filed to remove impediments to the marketability of the bonds, it follows that authorizing issuance of all the bonds is necessary and desirable. Real Parties do not address the argument that the decision to authorize the issuance of all the outstanding bonds in order to validate them is a litigation strategy decision, which the Bagley-Keene Act Open Meeting Act expressly permits to be made in closed session. (Gov. Code, § 11126, subd. (e)(1).) A finance committee must vote to authorize the bonds in open session, but is permitted in closed session both to hear privileged information bearing on litigation strategy reasons for authorizing issuance, and to authorize a validation action.

In short, Real Parties did nothing to rebut the presumption that the Committee properly authorized the bonds. (See Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"].) "This rebuttable presumption affects the burden of proof (Evid. Code, § 660) and effectuates the policy of relieving governmental officials from having to justify their conduct whenever it is called into question," shifting the burden of proof to the challenger to show "the non-existence of the presumed fact." (*Jackson v. City of Los Angeles* (1999) 69 Cal.App.4th 769, 781-782, internal citations and quotations omitted [citing Evid. Code, § 606].) Thus, even if this were a mandamus proceeding, and even if the Bond Act imposed some substantive standard by which to judge the Committee's exercise of discretion, it would not have been sufficient for Real Parties to show the absence of evidence. The burden would have been on Real Parties to show that the Committee acted arbitrarily and capriciously or otherwise failed to comply with applicable requirements. They did not even attempt to meet this burden.

D. Uses of Bond Proceeds Are Irrelevant in the Validation Action.

Real Parties contend that "[t]he Superior Court expressly reserved judgment on other theories under which the bonds could be deemed invalid . . . ." (Howard Jarvis Return, pp. 1-2.)[8] As Real Parties' papers

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[8] Real Party Union Pacific agrees that this action is limited to bond validity and does not extend to claims relating to use of bond proceeds. (Union Pacific Opposition, pp. 15-23.) It asks, however, that the judgment entered be limited to claims raised under Streets and Highways Code section 2704.13. (*Id.* at p. 18.) This request should be rejected because so narrowing the validation judgment would defeat its purpose—to obtain a judgment binding against all persons as to all issues for all time. (See Code Civ. Proc., § 870.) The proposed judgment addresses Union Pacific's concerns by providing that the determination of validity will not affect

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demonstrate, those "other theories" addressed uses of bond proceeds and other matters not at issue in the Validation Action. (Tos Return, pp. 33-42; Howard Jarvis Return, pp. 7-23; Church Return, pp. 28-34.) Accordingly, no remand is required to dispense with these theories. They can be adjudicated in separate actions.

While reserving judgment on challenges to uses of proceeds, the trial court was clear that "[i]ssues regarding the use of proceeds are separate from the issue raised in this validation action, which is whether the bonds were properly authorized." (Tab 4, HSR00055.) In support of their misplaced use of proceeds arguments, Real Parties tellingly rely on materials that were not part of the record in the Validation Action. (See Tab 4, HSR00057-HSR00062 [court's November 25, 2013 order, reviewing contents of record]; see also Tos Return, pp. 35-37, 39-40; Howard Jarvis Return, pp. 8-10, 12-16, 18-21, 23.) A number of the documents they cite were part of the record in Tos, and the trial court refused to take judicial notice of them in the Validation Action precisely because they were not relevant. (Tab 4, HSR00057-HSR00060; see Tos Return, pp. 35-37, 39-40, citing Tabs 273, 323, 373, 396; Howard Jarvis Return, pp. 10, 12, 13, 18-20, citing Tabs 255, 323, 324, 373; Church Return, pp. 13-14, citing Tabs 323, 334, 337, 345-359, 362-368, 372, 373, 377.)[9] The court properly recognized that the list of statutes and documents

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future challenges to uses of proceeds, which may be brought separately. (Tab 189, HSR02767.)

[9] Howard Jarvis notes that it sought information related to trip times in the Validation Action. (See Howard Jarvis Return, p. 16, fn. 14.) The trial court appropriately denied a motion to compel this discovery because it was not relevant to the Validation Action. (See Tabs 48, 72.)

that could be considered in the Validation Action was strictly limited to those relating to bond authorization. (Tab 4, HSR00056-HSR00062.)

Arguments relating to uses of proceeds are irrelevant because the Validation Action did not attempt to validate any specific use of proceeds, and because the bond resolutions did not identify any particular use. (See, e.g., Tab 189, HSR02766 [stating any challenges based on use of proceeds will not affect the determination of validity of the bonds].) The Authority did not submit any plan or appropriation with its request for bond authorization and therefore need not establish that any particular plans for spending proceeds comply with the Bond Act. Rather, Petitioners sought to validate bonds that could later be spent on any of the purposes authorized by the Bond Act in sections 2704.04 and 2704.06 of the Streets and Highways Code. (See, e.g., Tab 108, HSR01961.) Because the resolutions use the exact language of the specific object authorized by the voters in the Bond Act, there can be no question that Petitioners have complied with article XVI, section 1 of the California Constitution. Accordingly, the trial court ruled that "[t]he issue before the Court in this validation proceeding is *strictly limited to whether the Finance Committee's determination that issuance of bonds was necessary and desirable* as of March 18, 2013 is supported by any evidence in the record." (Tab 4, HSR00070, italics added.)[10]

While a validation judgment is binding as to "all matters therein adjudicated or which at that time could have been adjudicated" (Code Civ. Proc., § 870, subd. (a)), matters "which at that time could have been adjudicated" are limited to those raised by the complaint (*id.*, § 860). Here,

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[10] The Tos Real Parties conceded that use of proceeds issues have no bearing on the Validation Action by stipulating to have *Tos* heard separately from this action and agreeing that none of the issues in the *Tos* action "call into question the validity of the issuance of bonds." (Tab 137.)

the complaint was limited to the validity of issuance of the bonds for any purpose authorized by the Bond Act, and did not tie issuance to any particular use of proceeds. Accordingly, the complaint did not permit opponents to raise specific uses of proceeds as a defense to the action, because these were outside the scope of the complaint. If the rule were otherwise, and opponents of validation could inject issues outside the complaint, a validation proceeding would lose its value as a procedure that allows a government agency "to settle promptly all questions about the validity of its action," and would simply become another opportunity to create litigation obstacles. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842.) By authorizing the bonds for the general purposes listed in the Bond Act, the Committee eliminated specific uses of proceeds as an issue relevant to the validation proceeding. Real Parties cannot insert into the Validation Action use of proceeds issues that are not raised by the terms of the bond issuance itself.

In this case, bond *authorization* is distinct from the *expenditure* of bond proceeds. Whether or not any particular later expenditure of bond funds would comply with the Bond Act is not relevant to the validity of bond authorization and, as cases cited by Real Parties demonstrate, can be adjudicated in separate actions. (See *O'Farrell v. County of Sonoma* (1922) 189 Cal. 343, 344, 349 [demurrer should have been overruled in action to obtain injunction against unlawful expenditure of bond proceeds].) When bonds that have been authorized will allegedly be spent on an invalid use, the remedy is to prevent that expenditure (see, e.g., *Tooker v. San Francisco Bay Area Rapid Transit Dist.* (1972) 22 Cal.App.3d 643, 649, 652 [actions for writ of mandate and injunction asserting construction contract was invalid use of bond proceeds, inter alia, because it abandoned plans for a West Portal subway]), not to withhold validation of the bonds (*Clark v. City of Los Angeles* (1911) 160 Cal. 30, 37).

For these reasons, Real Parties' argument is not supported by validation cases in which the stated uses of proceeds for the bonds were illegal or the subject of validation themselves. (See *California Statewide Communities Development Authority v. All Persons Interested in Matter of Validity of a Purchase Agreement* (2007) 40 Cal.4th 788, 795 [considering constitutionality of bond issuance where proceeds were intended to fund capital improvements at private religious schools]; *Morgan Hill Unified School District v. Amoroso* (1988) 204 Cal.App.3d 1083, 1086-1087 [determining validity of resolutions authorizing both bond issuance and use of proceeds for construction improvements, which use of proceeds required separate voter approval].)

Real Parties also rely on an Attorney General opinion (92 Ops.Cal.Atty.Gen. 1 (2009)) that is inapposite here. The opinion addressed hypothetical questions about a school district's authority to issue refunding general obligation bonds without further voter approval, including the consequences of applying the proceeds from the sale of bonds to purposes not authorized. Here, in marked contrast, the Committee authorized issuance of bonds solely for purposes authorized by the voters in the Bond Act. Further, no invalid purpose is or could be alleged here because the Bond Act was properly approved by the voters and there is no constitutional restriction on using bond proceeds to build a high-speed rail project. (Cf. *State ex rel. Pension Obligation Bond Committee v. All Persons Interested* (2007) 152 Cal.App.4th 1386, 1407-1408 [holding that bonds could not be validated because they were not authorized by the voters or two-thirds vote of the Legislature and did not qualify for an exception to the debt limit].) The cited Attorney General opinion does not address a case in which bonds were authorized for a proper purpose but it is alleged, as Real Parties contend here, that they will instead be used for something other than that purpose.

In sum, use of proceeds challenges are irrelevant to bond validity in this action and, if this Court concludes that the trial court erred, there would be no reason to remand the case to resolve these challenges.

II. THE TRIAL COURT SHOULD RECALL THE WRIT ISSUED IN *TOS.*

Petitioners contend that there were no grounds for the trial court to issue a writ ordering the Authority to rescind its first funding plan, or requiring it to adopt a new one before it can prepare a second funding plan that will allow it to seek authority to spend and commit funds the Legislature has appropriated. In response, Real Parties argue, without legal support, that every provision put before the voters in a bond act is specifically enforceable. (Tos Return, pp. 42-44.) They also argue that the funding plan was inadequate (*id.* at pp. 44-49), an argument which is not responsive to the Petition. Finally, they pray for affirmative relief, in the form of an order invalidating Senate Bill 1029, the Legislature's appropriation of billions of dollars in both federal and state funds to build the Central Valley project. (Tos Return, pp. 50-53.) This request is easily disposed of as it is both procedurally barred and meritless.[11]

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[11] The trial court considered on its merits and rejected the *Tos* plaintiffs' request to invalidate the appropriation following trial of the writ proceedings (Tab 5, HSR00085-HSR00087), and it has even less merit in the context of this extraordinary writ proceeding. "A real party in interest may not obtain review of adverse trial court determinations by way of response to another party's writ petition." (*County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1324, fn. 9.) Further, the *Tos* plaintiffs continue to seek invalidation of the appropriation in the continuing proceedings in the trial court. On March 21, 2014, Petitioners filed in this Court a second Petition for Extraordinary Writ of Mandate or Other Appropriate Writ, Case No. C076042, challenging the trial court's decision to set the *Tos* challenge to the appropriation, along with other claims, for an ordinary civil trial.

A. Real Parties Fail to Address Dispositive Issues.

The trial court reasoned that a writ should not issue in the *Tos* case unless it would either invalidate the appropriation or the Authority's subsequent approvals of contracts. (Tab 5, HSR00085.) It found that the writ would *not* have this effect because:

- the Authority did not spend or commit bond funds in violation of the Bond Act (Tab 6, HSR00093);
- Tos's attempt to invalidate the appropriation failed (Tab 5, HSR00086);
- funds the Authority committed for non-construction purposes under Streets and Highways Code section 2704.08, subdivision (g), did not violate the Bond Act because they did not require a funding plan at all (*id.*, HSR00087); and
- Tos's attempt to invalidate the Authority's approval of two construction contracts and its use of federal grant funds failed (Tab 6, HSR00092-HSR00093).

Thus, Petitioners argued that, under the logic of its own analysis, the trial court erred when it issued the writ. (Petition for Extraordinary Writ of Mandate, Application for Temporary Stay, and Memorandum of Points and Authorities, filed January 24, 2014 ("Petition"), pp. 39-40.) Real Parties do not address this argument.

Real Parties also do not dispute that the trial court's writ improperly interferes with the Legislature's exercise of its appropriation authority, because it creates an obstacle to the funds appropriated not found in the Bond Act. (Petition, pp. 45-47.) If Petitioners were to prevail on this contention alone, the trial court's writ would have to be vacated. Yet Real Parties fail to address it.

Instead of addressing these critical issues, Real Parties retreat to misplaced arguments that the first funding plan did not comply in all

respects with the Bond Act. (Tos Return, pp. 44-49.) While Petitioners disagree with the trial court's decision regarding the sufficiency of the first funding plan, it is not necessary to challenge that decision in order to demonstrate that the trial court's decision to issue a writ was error. (Petition, p. 37.) Similarly, by attempting to defend the court's decision by focusing on the sufficiency of the first funding plan Real Parties cannot and do not demonstrate that the writ was a proper remedy.

B. The Trial Court Erred in Issuing the Writ Because There Is No Legal Remedy for Alleged Deficiencies in the First, Pre-Appropriation Funding Plan.

Petitioners have shown that the trial court erred in issuing the writ because there is no legal remedy for alleged deficiencies in the first funding plan. If the Legislature, after considering the Authority's plan as well as all other input, had found that plan deficient, it could have declined to appropriate funds and sent the Authority back to the drawing board. Instead, it appropriated funds, and the appropriation superseded the first funding plan as a predicate to a second, pre-expenditure funding plan. Real Parties argue that the requirements of the first funding plan are nevertheless subject to judicial review because any law the voters approve is a contract that is specifically enforceable, no matter its terms. (Tos Return, pp. 42-44.) This argument is meritless.

The remedy for alleged failures to comply with a law is not determined by how the law was enacted (whether it is enacted by the Legislature or adopted by the voters), but by the law's plain language. In construing a ballot measure, courts use the same principles that govern statutory construction generally. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037.) Tos argues that the first funding plan must be reviewable because: (1) it was on the ballot (Tos Return, pp. 42-43); (2) the ballot pamphlet promised financial

oversight of the Authority (*id.*, p. 43); and (3) the voters have a right to specifically enforce the requirements for the first funding plan because the Bond Act did not expressly state that those requirements existed solely for the Legislature's benefit (*id.*, pp. 43-44). But these arguments are not supported by any relevant authority, let alone the Bond Act itself.

The determination of whether a particular deviation from any bond measure act is actionable depends on whether it prejudices the rights of the taxpayers or prejudicially misleads the voters. (See *Board of Supervisors of Placer County v. Rechenmacher* (1951) 105 Cal.App.2d 39, 43; *City of San Diego v. Millan* (1932) 127 Cal.App. 521, 536 [change in dam design from masonry to earthen was not prohibited by bond act where it placed no greater burden on taxpayers].) Here, the first funding plan is not a final agency action at all, but a first step in a multi-step process to begin construction. After the Authority adopts the first funding plan, it must be reviewed by the peer review committee and the Legislature, the Legislature must appropriate funds, and the Authority must adopt the more detailed second funding plan and submit that plan (along with an expert evaluation of its feasibility) to the peer review group, the Legislature, and the Director of Finance. (Sts. & Hy. Code, § 2704.08, subds. (c), (d); Pub. Util. Code, § 185035, subd. (a).) Finally, the Director of Finance must conclude that the second plan is "likely to be successfully implemented as proposed." (Sts. & Hy. Code, § 2704.08, subd. (d).) All of these steps must be completed before the Authority may commit or spend any bond funds on construction. (*Ibid.*) The first, pre-appropriation funding plan was intended to inform the Legislature's action on the Authority's request for an appropriation. By itself, that plan cannot impair the interests of the voters and taxpayers, and therefore cannot give rise to a private right of action.

Nothing in the Proposition 1A ballot pamphlet promised voters a private right of action to test the adequacy of the Authority's initial funding

plan. Oversight by the peer review group, the Legislature, the Governor, and the Director of Finance is what was promised. (Sts. & Hy. Code, §§ 2704.08, subds. (c), (d); Pub. Util. Code, §§ 185033, 185035.) Nor does the Legislative Analyst discuss any requirement of the funding plans; it emphasizes that the plans are subject to review by the Department of Finance, the Legislature, and the peer review group. (Tab 319, HSR05125.) The analysis did not set any expectation that Real Parties would be allowed to test the first funding plan against their own interpretation of the Bond Act. (*Ibid.*) The arguments for and against Proposition 1A also did not suggest that there would be any cause of action—or sanction—for deficiencies in the first funding plan. In fact, the argument against the measure instructed voters that: "Politicians, bureaucrats, and special interests will control the money, not voters." (*Id.*, HSR05127.) The argument in favor states that the measure will provide "[p]ublic oversight and detailed independent review of financing plans," and that "[m]atching private and federal funding [will] be identified BEFORE state bond funds are spent." (*Id.*, HSR05126, upper case in original.) The independent oversight promised to the voters has been delivered. (Tabs 339-342, 350-351, 359, 369-370, 385, 392-396, 419-420.)[12]

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[12] The cases on which Real Parties rely, *O'Farrell v. Sonoma County, supra,* 189 Cal. 343, *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, and *Jenkins v. Williams* (1910) 14 Cal.App. 89, are inapposite. These cases stand for the unremarkable proposition that when the voters approve a specific dollar amount of bonds for a specific purpose those dollars cannot be used for a different purpose. The purpose for which the bonds issued was the construction of a portion of the high-speed rail system; the first funding plan was an early step toward achieving that purpose.

C. Requiring the Authority to Rescind and Approve a New First Funding Plan Serves No Legitimate Remedial Purpose.

The trial court should not have issued the writ because it would serve no legitimate remedial purpose: (1) the first, pre-appropriation funding plan served its purpose once the Legislature appropriated funds; and (2) the first funding plan is not a necessary prerequisite to a second funding plan. Real Parties did not address the first argument, and their response to the second is unavailing.

The Bond Act is clear that the first funding plan is part of a pre-*appropriation* oversight procedure. (See Sts. & Hy. Code, § 2704.08, subd. (c) ["No later than 90 days prior to . . . the initial request for appropriation. . . ."]; Pub. Util. Code, § 185033, subd. (b)(2) [providing that, in preparing its biennial business plans, the Authority should to the extent feasible draw on information and material developed for the "preappropriation review process and the preexpenditure review process" in Streets and Highway Code section 2704.08].) The pre-appropriation process concluded in July 2012, when the Legislature granted the Authority's request and enacted the appropriation. (Stats. 2012, ch. 152, § 9, p. 77, West's Ann. Sts. & Hy.—Appen. (2014 ed.).) Once enacted, the appropriation superseded the first funding plan.

Real Parties argue that the writ would have "real and practical effects" because the trial court concluded that the Bond Act requires a fully compliant first funding plan before a second plan may be approved. (Tos Return, p. 49.) But procedurally, the trial court's interpretation of the Bond Act is not entitled to deference, and substantively it was wrong. (*Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082-1083 [holding that questions of law are subject to de novo review]; Tab 6, HSR00091-HSR00092.)

The sole basis for the trial court's decision was its finding that Streets and Highway Code section 2704.08, subdivision (d), does not require that the second funding plan certify that all environmental clearances necessary to proceed to construction have been obtained. (Tab 6, HSR00091-HSR00092; see Tos Return, pp. 47-48.) But the Bond Act does not state that the Authority cannot approve a second, pre-expenditure subdivision (d) plan unless there first has been a fully compliant subdivision (c) funding plan. And courts should not imply conditions that are not stated in a ballot measure. (*See San Diego County v. Perrigo* (1957) 155 Cal.App.2d 644, 645-647 [where actual cost of building facilities was 41 percent more than stated in the ballot measure, but the measure did not contain a statement limiting the total expenditure to the amount of the bond issue, court declined to imply such a restriction].)

The trial court's concern was that the second, pre-expenditure funding plan "is not required to address environmental clearances." (Tab 6, HSR00092.) But that concern is unwarranted, and the decision to read a new requirement into the Bond Act was error. That second, pre-expenditure funding plan would have to disclose that information because it must describe any material changes from the first funding plan (Sts & Hy. Code, § 2704.08, subd. (d)(1)(E)); it must be accompanied by a report from an independent consulting firm indicating that "construction of the corridor or usable segment thereof can be completed as proposed in the plan"; and it must include "an assessment of risk and the risk mitigation strategies proposed to be employed," (*id.*, subd. (d)(2)(A), (E)). Moreover, the Director of Finance must determine "that the plan is likely to be successfully implemented as proposed." (*Id.*, subd. (d).) Because a lack of environmental clearances would, as Real Parties argue, impact the feasibility of the project, that fact would have to be reflected in the second, pre-expenditure funding plan.

Real Parties argue that "[r]equiring all environmental clearances to be obtained early on, well before construction began, would minimize" the risk "of construction being delayed or halted because of an environmental problem." (Tos Return, p. 47.) Real Parties do not explain, however, why the force of the environmental laws themselves, the continued oversight of the Legislature, the Director of Finance, the State Public Works Board, and the peer review group, and the requirements of Streets and Highways Code section 2704.08, subdivision (d), are not sufficient to address these perceived risks.

III. NEITHER LACHES NOR ESTOPPEL BARS THIS WRIT PROCEEDING.

Finally, Real Parties assert that laches and/or estoppel bar the Petition. (Tos Return, p. 11 [third and fourth affirmative defenses]; Water District Return, pp. 13, 21-25 [same].) These defenses are without merit.

The laches argument contends that the Petition was a prejudicially late challenge to the trial court's August 16, 2013 ruling in *Tos* that the Authority's first funding plan did not comply with the Bond Act. (Water District Return, pp. 22-23.) The Petition, however, does not challenge the August ruling, but the much later ruling ordering the *remedy*, i.e., the writ of mandate requiring the Authority to rescind the plan. (See Petition, pp. 36-47.) The court did not sign that order until January 3, 2014, and it was not served on Petitioners until January 16, 2014 (Tab 2, HSR00035, HSR00049)—just eight days before Petitioners filed in the Supreme Court.

The trial court did indicate in its November 25, 2013 ruling in *Tos* that a writ would issue (Tab 6, HSR00092), but Petitioners subsequently asked the court to delay issuing the writ until final judgment in the case (to preserve their appellate rights) (Tab 11). Petitioners could not have known the court would deny that request until the writ issued. There was no

"unreasonable" delay, and therefore laches does not bar the Petition. (*Magic Kitchen LLC v. Good Things Intern. Ltd.* (2007) 153 Cal.App.4th 1144, 1157.) Similarly, in the Validation Action, the trial court issued its ruling on November 25, 2013, but did not enter judgment until more than a month later. Petitioners filed the Petition three weeks later—by no means an "unreasonable" delay, let alone a *prejudicial* delay. (*Id.* at pp. 1161-1162.)

Real Parties' estoppel defense likewise fails. (Water District Return, pp. 24-26.) Statements the Authority made (in another case pending in this Court) about a decision by the federal Surface Transportation Board ("STB") do not give rise to an estoppel or call into question this Court's jurisdiction to review the trial court's rulings in this case. The issue posed by the STB's assertion of jurisdiction, and its regulation of the high-speed rail project construction under the federal Interstate Commerce Commission Termination Act, is whether federal law preempts environmental review otherwise required by the California Environmental Quality Act ("CEQA"). Neither the Validation Action nor *Tos* raise issues of federal preemption.

CONCLUSION

For all of these reasons, as well as the reasons set forth in the Petition and accompanying memorandum of points and authorities, this Court should exercise its jurisdiction to hear the Petition and grant the relief prayed for therein.

Dated: April 1, 2014

Respectfully submitted,

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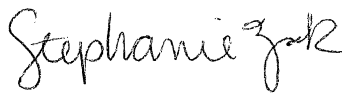

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CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITIONERS' REPLY IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT OF MANDATE** uses a 13 point Times New Roman font and contains 7,349 words.

Dated: April 1, 2014

KAMALA D. HARRIS
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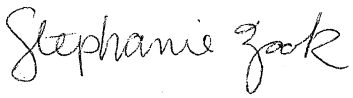

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DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **California High-Speed Rail Authority, et al. v. The Superior Court of Sacramento County, et al.**
No.: **C075668**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with **Golden State Overnight**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On April 1, 2014, I served the attached **PETITIONERS' REPLY IN SUPPORT OF PETITION FOR EXTRAORDINARY WRIT OF MANDATE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 1, 2014, at Sacramento, California.

Eileen A. Ennis
Declarant

Eileen A. Ennis
Signature

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SERVICE LIST

Case Name: **CALIFORNIA HIGH-SPEED RAIL AUTHORITY, et al. v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, et al.**

Case No.: **C075668**

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