

**CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT**

CALIFORNIA HIGH-SPEED RAIL AUTHORITY *et al.*

Petitioners

v.

**THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF
SACRAMENTO**

Respondent

JOHN TOS, AARON FUKUDA, AND COUNTY OF KINGS,

Real Parties in Interest

Sacramento County Superior Court Case Number 34-2011-0113919-CU-
MC-GDS; Department 31, Hon. Michael P. Kenny, Judge.

**MOTION FOR JUDICIAL NOTICE OF REAL PARTIES IN
INTEREST JOHN TOS, AARON FUKUDA, COUNTY OF
KINGS IN SUPPORT OF PRELIMINARY OPPOSITION**

Stuart M. Flashman, SBN 148396
Law Offices of Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
Telephone and fax: (510) 652-5373
e-mail: stu@stufash.com

Michael J. Brady, SBN 40693
1001 Marshall Street, Ste 500
Redwood City, CA 94063-2052
Telephone: (650) 364-8200
Facsimile: (650) 780-1701
e-mail: mbrady@rmkb.com

Attorneys for Real Parties in Interest
JOHN TOS, AARON FUKUDA, AND COUNTY OF KINGS

Real Parties in Interest John Tos, Aaron Fukuda, and County of Kings (“RPI”) hereby move the Court, pursuant to Evidence Code §§ 452(c) and 459, to grant judicial notice, in support of their Preliminary Opposition to the Petition for Extraordinary Writ of Mandate in the above-entitled case, of the section of the Governor’s 2014 - 2015 proposed California State Budget, designated as “Transportation,” a true and correct copy of which is attached hereto as Exhibit A, and specifically to the bullet-point at the top of page 100, headed, “Significant Adjustment.”

MEMORANDUM OF POINTS AND AUTHORITIES

A. THE DOCUMENT FOR WHICH NOTICE IS REQUESTED IS ENTITLED TO JUDICIAL NOTICE AS AN OFFICIAL ACT OF THE EXECUTIVE DEPARTMENT OF THE STATE OF CALIFORNIA.

RPI ask judicial notice of the attached document pursuant to Evidence Code §452(c), which allows the Court to take judicial notice of official acts of the legislative, executive, and judicial departments of the United States or of any state of the United States. The annual budget submitted to the legislature by the Governor of California is an official act of the executive department of the State of California, and is therefore properly subject to judicial notice. (*See, Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 293 fn.2 [court took judicial notice of portions of the Governor’s budget summaries for FY 1992-1993 and 1999-2000].)

While judicial notice of this document was not requested in the trial court proceedings, that was because at that point the 2014-2015 budget and proposed allocations thereunder were not yet at issue. However, the trial court was asked to take judicial notice of portions of the Governor's 2012 budget request, May revise (6 HSR 4070, 4187-4191 [Tab 269]), and it granted that request without objection. (1 HSR 91:14-15 [Tab 6].)

B. THE DOCUMENT FOR WHICH NOTICE IS REQUESTED IS RELEVANT TO THE QUESTION OF WHETHER PETITIONERS WOULD BE PREJUDICED IF THE PETITION FOR EXTRAORDINARY WRIT OF MANDATE WERE SUMMARILY DENIED.

In addition to being subject to judicial notice, judicial notice also requires that the requested fact or document be relevant to an issue that is before the Court. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1326.)

Here, Petitioners claim that they will be prejudiced unless their Petition is accepted for review and granted because it will place at risk over \$2 billion in federal grants that must be spent by 2017 and require a matching payment of state funds. Petitioners argue that the pendency of a challenge to the use of Proposition 1A bond funds for construction of the California High-Speed Rail Authority's proposed project puts at risk the availability of matching funds.

What Petitioners have not mentioned is that the Governor's 2014-2015 budget request includes \$250 million in AB 32 "cap and trade

auction” proceeds to be used towards high-speed rail construction. (Exhibit A at p.100 [page 6 of the exhibit].) In addition, the budget discusses proposed legislation to dedication an ongoing portion of cal and trade auction proceeds to the high-speed rail project. The budget request notes that:

...the new Cap and Trade funds are critical to addressing the overall funding needs for the initial operating segment, leveraging additional funding opportunities, and moving forward while legal issues surrounding Proposition 1A are being resolved. Moving the project forward with Cap and Trade funds will help meet the state matching requirements in the federal grant agreement and will help avoid long-term project escalation costs. [emphasis added]

Thus, contrary to Petitioners’ representation, it is possible for state matching funds to be provided (if the Legislature so agrees) even if the writ petition is summarily denied.

CONCLUSION

Based on the above, RPI respectfully request that their Motion for Judicial Notice be granted and the Court take judicial notice of the portion of the Governor’s 2014-2015 budget request.

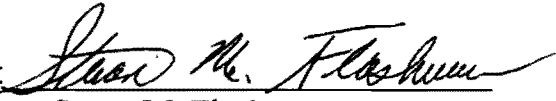
Dated: March 29, 2014

Respectfully submitted,

Michael J Brady

Stuart M. Flashman

Attorneys for Real Parties in Interest
John Tos, Aaron Fukuda, and County of
Kings

By: 
Stuart M. Flashman

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 am one of the attorneys representing Real Parties in Interest John Tos et al in these proceedings. I have personal knowledge of the facts stated in this declaration and am competent to testify as to them if called as a witness.

2. I personally downloaded, in electronic form, the document attached hereto as Exhibit A from the following internet site:

<http://www.ebudget.ca.gov/2014-5/pdf/BudgetSummary/Transportation.pdf>

which site is part of the official website of the executive branch of the State of California

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct. Executed this twenty-ninth day of March, 2014 in Oakland, California.

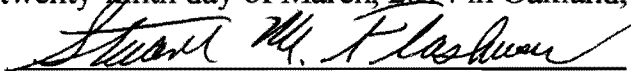

Stuart M. Flashman

Exhibit A

TRANSPORTATION

The Transportation Agency is responsible for improving the mobility, safety, and sustainability of California's transportation system. The Agency consists of the following six state entities:

- Department of Transportation
- California Transportation Commission
- High-Speed Rail Authority
- Department of Motor Vehicles
- California Highway Patrol
- Board of Pilot Commissioners

The Office of Traffic Safety operates within the Office of the Secretary for Transportation and the New Motor Vehicle Board operates within the Department of Motor Vehicles. The Agency's budget also includes the State Transit Assistance item, which supports local transit operators.

The Budget includes total funding of \$15.3 billion (\$83 million General Fund and \$15.2 billion other funds) for all programs administered within the Agency.

TRANSPORTATION INFRASTRUCTURE PRIORITIES

Last year's Governor's Budget directed the Transportation Secretary to form a workgroup to prioritize transportation expenditures, explore long-term pay-as-you-go revenue options, and evaluate the most appropriate level of government to deliver high-priority investments to meet the state's infrastructure needs. To meet that charge, a stakeholder group met throughout 2013. Informed by the workgroup effort, the Administration recommends focusing on three areas: maintaining existing transportation infrastructure, modernizing rail, and supporting local governments as they implement sustainable communities plans pursuant to Chapter 728, Statutes of 2008 (SB 375).

To make progress on these priorities, the Budget includes new investments in transportation from Cap and Trade proceeds, the remaining allocation of Proposition 1B bond funds, and early loan repayments from the General Fund. In total, these resources reflect a \$1.7 billion investment in transportation infrastructure above current levels.

The stakeholder workgroup helped establish investment priorities, and will continue into 2014. Future efforts will focus on the implementation of reforms, many of which will be outlined in an upcoming external review of the Department of Transportation; implementation of goods-movement strategies, which are being developed through separate state and federal panels; and continuing the discussion on long-term stable transportation revenues to address declining revenues from fuel excise taxes.

DEPARTMENT OF TRANSPORTATION

The Department of Transportation (Caltrans) has almost 20,000 employees and a budget of \$10.9 billion. Caltrans designs and oversees the construction of state highways, operates and maintains the highway system, funds three intercity passenger rail routes, and provides funding for local transportation projects. The Department maintains 50,000 road and highway lane miles and 12,559 state bridges, and inspects 402 public-use and special-use airports and heliports. The largest sources of funding for transportation projects are excise taxes paid on fuel consumption, federal funds also derived from fuel taxes, and weight fees on trucks.

Significant Adjustments:

- **Cap and Trade Funding for Transportation**—The Budget includes Cap and Trade funds for programs that will be administered in full, or in part, by Caltrans. Additional

information on the overall Cap and Trade program is in the Environmental Protection Agency chapter.

- **Rail Modernization**—The Budget proposes \$300 million in new funding for rail modernization; including \$50 million for Caltrans and \$250 million for the High-Speed Rail Authority. This continues the work begun in 2012, when Chapter 152, Statutes of 2012 (SB 1029), provided \$7.8 billion in state and federal funds to start construction of high-speed rail and to modernize existing rail systems across the state. The \$50 million in the Caltrans budget will fund competitive grants for existing rail operators to integrate rail systems and to provide connectivity to high-speed rail. The program will be managed by the Transportation Agency, and the work of southern and northern California rail partner groups will be considered in making project selections.
- **Sustainable Communities Strategies**—The Budget proposes \$100 million for the Strategic Growth Council for a broad set of investments to support implementation of SB 375 sustainable communities strategies. The program will include the following types of projects: transit and transit-oriented development that includes low-income housing; active transportation; agricultural-land preservation; and related planning.
- **Repayment of General Fund Loans**—The Budget includes \$351 million in early General Fund loan repayments. Of the total to be repaid, \$337 million will be used to accelerate preservation and maintenance projects on both state highways and local roads that would otherwise be funded in 2015-16 or thereafter. Accelerating existing projects will allow for new projects to be added to the State Highway Operations and Protection Program in future years to make further investments in the state highway system. Preservation projects include pavement, traffic management mobility projects, bridge projects, and drainage system rehabilitation projects. Additionally, the proposed repayment includes support for sustainable communities through funding of active transportation and environmental mitigation. Funds from the repayment of General Fund loans will be allocated as follows:
 - \$110 million to fund pavement rehabilitation projects on state highways.
 - \$100 million to cities and counties for preservation of local streets and roads.
 - \$100 million for traffic management mobility projects.
 - \$27 million for highway pavement maintenance.

- \$9 million for active transportation projects.
- \$5 million for environmental mitigation.
- Appropriation of Proposition 1B Bond Funds—The Budget proposes \$1.1 billion in bond funds and administrative cost savings that Caltrans has generated in its management of the bond program. The funding includes \$793 million to support local transit operators, \$160 million for intercity rail, and \$113 million for additional state highway projects. Expenditures in these areas support the regional implementation of SB 375 sustainable communities plans.
- Zero-Base Budget Review—Executive Order B-13-11 directs the Department of Finance to modify the state budget process to increase efficiency and focus on accomplishing program goals. Pursuant to this Executive Order, Finance and Caltrans developed a multi-year plan to conduct a zero-base analysis of all Caltrans programs. The Capital Outlay Support and Aeronautics Programs were reviewed in the fall of 2013. The Budget includes the following proposals that reflect the outcome of the zero-base review:
 - Capital Outlay Support Program—The Capital Outlay Support program provides the resources necessary for design, environmental review, right of way, and construction oversight work for Caltrans' capital projects. As part of last year's Budget, Finance and the Legislative Analyst's Office were directed to review the program in collaboration with Caltrans. This review focused on current operations and methods to improve estimates of project-direct workload. While Caltrans will continue to explore longer term improvements to both its processes and its internal controls, the Administration is putting forward the following recommendations based on the review by the workgroup: (1) Improve project budgets through the development of a predictive tool to help establish initial project budgets that account for various factors like project types, environmental permits, and location, (2) Create a methodology for the use of flexible resources to meet overall staffing needs, (3) Increase accountability and transparency by aligning support cost guidelines currently used for the State Transportation Improvement Program and the State Highway Operation and Protection Program, (4) Consolidate and streamline statewide program management manuals and directives to increase project management efficiency and consistency across all 12 districts.
 - Aeronautics Program—The Aeronautics Program promotes development of a safe, efficient, dependable, and environmentally compatible air

transportation system. It issues permits for general aviation airports and heliports, integrates aviation into statewide transportation planning, considers environmental issues related to aviation, and administers grant and loan programs. Based on a workload analysis, the current staffing level is appropriate and adequate to perform aeronautics duties. The Budget proposes to transfer \$4 million from the Local Airport Loan Account to the grant program to provide state matching funds for 55 federal grants. The Budget also proposes statute authorizing future transfers between these funds upon approval of the California Transportation Commission and Finance. The loan program currently has an \$18 million fund balance and is undersubscribed. State and local funds bring California \$275 million annually in federal aviation grants.

HIGH-SPEED RAIL

The High-Speed Rail Authority is responsible for the development and construction of a high-speed passenger train service between San Francisco and Los Angeles/Anaheim (Phase I), with extensions to San Diego and Sacramento and points in-between (Phase II). Proposition 1A, enacted in November 2008, authorizes \$9 billion in bond proceeds for the high-speed rail lines and equipment, and an additional \$950 million for state and local feeder lines. The federal government has also awarded the state nearly \$3.5 billion to design and fund portions of the project in the Central Valley. The Authority's 2012 Business Plan identifies a \$31.3 billion capital cost for the initial operating segment from Merced to the San Fernando Valley.

In 2012, approximately \$7.8 billion (Proposition 1A and federal funds) was appropriated for the high-speed rail project as follows:

- \$5.8 billion for construction from Madera to Bakersfield.
- \$1.1 billion for early improvement projects to upgrade existing rail lines in Northern and Southern California, which will lay the foundation for future high-speed rail service as it expands into these areas.
- \$819.3 million for connectivity projects to enhance local transit and intercity rail systems that will ultimately link to the future high-speed rail system.

Recent court decisions have delayed the use of Proposition 1A bond funds which were appropriated to support a portion of the overall capital funding for this segment.

Significant Adjustment:

- **Cap and Trade Funding**—The Budget includes \$250 million in Cap and Trade expenditures for Phase I project planning (\$58.6 million) and construction and right of way acquisition for the first phase of the Initial Operating Section (\$191.4 million). As indicated in the Caltrans section, this is part of Rail Modernization, which also includes \$50 million for urban, commuter and intercity rail operators. Proposed legislation establishes an ongoing state commitment of Cap and Trade proceeds to high-speed rail, which will facilitate future phases of the initial operating segment. In addition to previously identified federal and Proposition 1A bond funds, the new Cap and Trade funds are critical to addressing the overall funding needs for the initial operating segment, leveraging additional funding opportunities, and moving the project forward while legal issues surrounding Proposition 1A are being resolved. Moving the project forward with Cap and Trade funds will help meet the state matching requirements in the federal grant agreement and will help avoid long-term project escalation costs. Refer to the Environmental Protection Agency chapter for additional information on the overall Cap and Trade program.

DEPARTMENT OF MOTOR VEHICLES

The Department of Motor Vehicles (DMV) promotes driver safety by licensing drivers, and protects consumers and ownership security by issuing vehicle titles and regulating vehicle sales. The Budget proposes \$1.1 billion, all from non-General Fund sources, and 9,030 positions for support of DMV.

EXPANDED ELIGIBILITY FOR DRIVER'S LICENSES

Chapter 524, Statutes of 2013 (AB 60), requires, beginning January 1, 2015, DMV to accept driver's license applications if a driver does not have a Social Security Number but can instead provide other valid identification documents and proof of California residency. DMV estimates that 1.4 million undocumented immigrants will apply for driver's licenses using alternative types of valid identification documents. The implementation timeline will cover three years, assuming 38 percent of applicants request driver's licenses in 2014-15, 50 percent in 2015-16, and 12 percent in 2016-17.

Based on estimated timelines to secure new field offices, recruit and train 822 staff, make necessary system changes, and obtain federal approval of the redesigned driver's licenses, the Budget proposes \$64.7 million to implement the program beginning January 1, 2015. This assumes staff will be hired by September 2014 for training in

advance of the implementation date. The Budget also provides a mechanism to increase DMV resources if a significantly higher number of applicants request driver's licenses in 2014-15. DMV plans to establish five temporary offices in key locations throughout the state to address the influx of new applicants. Existing field offices will also accept driver's license applications by appointment. If necessary, DMV will offer appointments on Saturdays at specified locations. The five new temporary locations will be located in Santa Clara/San Jose, Los Angeles, Orange County, San Diego, and the South Central Coast. Offices are expected to be in place for two to three years. A newly constructed office in Fresno and a new leased facility in Lancaster/Palmdale will address the increased application workload in those areas.

CALIFORNIA HIGHWAY PATROL

The California Highway Patrol (CHP) promotes the safe, convenient, and efficient transportation of people and goods across the state highway system and provides the highest level of safety and security to the facilities and employees of the State of California. The Budget proposes \$2 billion, all from non-General Fund sources, and 11,051 positions for support of CHP.

Significant Adjustments:

- **Air Fleet Replacement**—The Budget proposes \$16 million for the replacement of four aircraft (two helicopters and two airplanes), representing the second year of a long-term replacement plan to replace CHP's aging air fleet.
- **Radio Console Replacement Project**—The Budget proposes \$4.9 million in one-time funding to replace dispatch radio consoles. The pilot will replace 12 dispatch radio consoles at two CHP communication centers. If the pilot is successful, it will be expanded to 25 communication centers throughout the state over a five-year period.

PROOF OF SERVICE BY MAIL AND ELECTRONIC SERVICE

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

On March 31, 2014, I served the within MOTION FOR JUDICIAL NOTICE OF REAL PARTIES IN INTEREST JOHN TOS, AARON FUKUDA, AND COUNTY OF KINGS IN SUPPORT OF PRELIMINARY OPPOSITION on the parties listed below by placing true copies thereof enclosed in sealed envelopes with first class mail postage thereon fully prepaid, in a U.S. mailbox at Oakland, California addressed as follows:

Sharon O'Grady, Deputy Attorney General*
Office of California Attorney General
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102-7004
Sharon.OGrady@doj.ca.gov

Raymond L. Carlson, Esq.*
Griswold, LaSalle, Cobb, Dowd & Gin LLP
111 East Seventh Street
Hanford, CA 93230
carlson@griswoldlasalle.com

Hon. Michael Kenny, Dept. 31
c/o Clerk of Court, Sacramento County Superior Court
Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814-1398

Presiding Judge
c/o Clerk of Court, Sacramento County Superior Court
Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814-1398

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

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

Executed at Oakland, California on March 31, 2014.


Stuart M. Flashman