IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

CALIFORNIA HIGH-SPEED RAIL AUTHORITY, GOVERNOR EDMUND G. BROWN JR., TREASURER BILL LOCKYER, DIRECTOR OF DEPARTMENT OF FINANCE MICHAEL COHEN, SECRETARY OF THE STATE TRANSPORTATION AGENCY BRIAN KELLY, and CHIEF EXECUTIVE OFFICER OF THE HIGH-SPEED RAIL AUTHORITY JEFF MORALES, **Petitioners,** **v.** **THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO,** **Respondent,** **JOHN TOS, AARON FUKUDA, COUNTY OF KINGS** **Real Parties In Interest.**	Case No. C076042

Sacramento Superior Court, Case No. 34-2011-00113919 CUMCGDS
Dept. 31; The Honorable Michael P. Kenny, Judge; Tel: (916) 874-6353

REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE

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INTRODUCTION

The public importance of the high-speed rail project, the risk of losing billions of dollars in federal funding appropriated to begin building it, and the superior court's decision to hold an unnecessary and wasteful trial of claims that are not cognizable on any grounds, all justify the exercise of this Court's extraordinary review. The Court also has grounds to review the questions presented by this petition along with those now pending review in *High-Speed Rail I* because both petitions arise from the same underlying action, share the same record, and raise overlapping legal questions. Real Parties' preliminary opposition does not effectively dispute any of these grounds for extraordinary review.

The preliminary opposition also fails to advance a viable argument that, after conducting and resolving a trial on claims for mandamus, the superior court was justified in setting a second trial on claims for declaratory and injunctive relief alleged under Code of Civil Procedure section 526a. As a matter of law, Real Parties' challenges to the design of the entire high-speed rail system (1) would be cognizable only in mandamus; (2) to the extent they are justiciable, they were resolved in the earlier mandamus proceeding that this Court is now reviewing; and/or (3) even were the claims cognizable, they are not ripe because the High-Speed Rail Authority's ("Authority") preliminary plans for "the entire system" will change many times before they become specific and final.

The Legislature and the voters have given the Authority discretion to decide how to implement the requirements of the Bond Act. To protect the democratic process and allow government to manage complex projects like this, the law limits judicial review of executive branch decision making. It is critical that these limits be observed to preserve the Legislature and voters' intent that the Authority build a high-speed rail system that serves the growing transportation needs of California.

ARGUMENT

I. EXTRAORDINARY REVIEW IS WARRANTED IN THIS CASE.

The Petition argued that writ review is warranted in this case because:

- the pendency of *Tos v. High Speed Rail Authority*, Sacramento Superior Court Case No. 34-2011-00113919 ("*Tos*") has placed at risk billions of dollars in federal grant funds;
- the construction of high-speed rail is of compelling public importance, as determined by the decision of the Legislature and the voters to build it;
- immediate intervention is needed to prevent an expensive and needless trial on claims that are only cognizable in mandamus and in any event are unripe;
- the Petition presents pure questions of law; and
- because the same complaint, the same record, the same governing law, and the same parties are already before this Court in *High-Speed Rail I*,[1] judicial economy weighs strongly in favor of resolving the issues now, particularly since resolving the instant petition in conjunction with *High-Speed Rail I* could result in a final disposition of *Tos*.

(See Petition, ¶¶ 19-23, pp. 26-27.) Instead of addressing the reasons to grant review in this case, Real Parties rely on a statement that writ review at the pleading stage is usually denied, found in the dissenting opinion in *Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381. (Preliminary Opposition, pp. 7-8.) That dissent, however, does not help them, and Real Parties do not address the many cases cited in the Petition that discuss the many exceptions to that principle and the reasons they apply in this case. Real Parties also fail to meaningfully address either the risk to funding for

[1] "*High-Speed Rail I*" refers to *California High-Speed Rail Authority et al. v. Superior Court*, Case No. C075668.

construction of high-speed rail, or the need to resolve the legal issue of whether challenges to the Authority's decisions are cognizable only in mandamus.

Real Parties instead focus on one of the arguments for writ relief: the climate of uncertainty created by the pendency of the *Tos* case and the risk it poses to billions of dollars in federal matching grants. They argue that there is no injury because Petitioners have not been enjoined from spending federal grant funds (or any other funds). (Preliminary Opposition, p. 6, fn. 5.) This argument, however, fails to grapple with the practical consequences of the superior court's erroneous ruling. Specifically, Real Parties fail to address the shortness of time. It is due to the *Tos* litigation that the Authority cannot access bond funds the Legislature and the voters approved when they adopted Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (the "Bond Act", codified at Streets and Highways Code section 2704 et seq.). Real Parties do not contest this fact. As a result, there are no funds committed to meet the State's matching obligations under the federal grant agreement. If the State cannot meet its matching obligation, it could lose the federal grant funds not yet spent (Tab 442, HSR09372[2]), and may also be required to pay back any amounts that have been spent but not matched (*id.*, HSR09370-HSR09371 [summarizing State's cost responsibility]).

Real Parties distort the record when they assert that "Petitioners have themselves stated that they will continue to spend those grant funds and expect to fully expend them prior to 2017, regardless of the continued trial court proceedings in this case." (Preliminary Opposition, p. 3.) Petitioners simply stated what is *permissible* based on the structure of the federal grant,

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[2] All citations to Tab numbers are to the Appendix of Exhibits, lodged March 21, 2014.

known as the "tapered match." (Tab 215, HSR03321 ["Under the tapered match funding strategy, a grantee is allowed to use federal funds to cover up to 100 percent of project costs from year to year, so long as overall funding ratios (federal and state) are met at project completion."].) It is also useful to understand the context in which Petitioners made that statement. Real Parties argued in *Tos* that the Authority had committed bond proceeds to construction projects in violation of the Bond Act, before adopting a second funding plan under Streets and Highways Code section 2704.08, subdivision (d). (Tab 9, HSR00234.) In response, Petitioners pointed out that *federal funds* and not *bond proceeds* had been spent on or committed to construction, and that, due to the tapered match, bond proceeds did not need to be committed right away. (Tab 9, HSR00238-HSR00239.) Just because it is permissible does not mean it would be prudent to allow the gap between state and federal funding to widen regardless of whether state matching funds are available. Nor does it mean that the Authority would allow that. By judicious use of the federal funds, the Authority has been able to mitigate delays attributable to the *Tos* litigation and keep the high-speed rail project moving forward. (See Tab 9, HSR00239.) This is not inconsistent with the argument that allowing a second trial interferes—as *Tos* always has—with the State's ability to spend all the federal grant funds by 2017.[3]

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[3] Real Parties also argue that writ review is unnecessary because "[a]lthough it has been more than five years since the passage of Proposition 1A, this is the only lawsuit that has been filed alleging noncompliance with that measure's requirements." (Preliminary Opposition at p. 2, fn. 2.) In fact, *Tos* is the third such action filed by Real Parties' counsel alone (that is in addition to other suits filed by other counsel and other parties, and challenges under the California Environmental Quality Act.) (See Petitioners' Request for Judicial Notice ("Pet. RJN"), Exhibits ("Ex.") 1-4, filed concurrently herewith.) These

(continued...)

Further, and contrary to Real Parties' suggestion, at the present time there is no ready, reliable, and sufficient source of funds available to replace bond proceeds. (See Preliminary Opposition, p. 6.) The Governor's proposal that the Legislature appropriate to the Authority $250 million in "cap and trade" auction fees is a proposal, not an appropriation. And even if appropriated, those funds would not replace the billions of dollars in bond funds required to meet the State's matching obligations and construct the crucial first segment of the high-speed rail system.

II. A WRIT SHOULD ISSUE DIRECTING THE SUPERIOR COURT TO ENTER JUDGMENT.

Real Parties concede that, to the extent they were ripe, all of their mandamus claims were resolved in the writ proceedings in the trial court. (Preliminary Opposition, p. 4, fn. 4; Tab 8, HSR00215-HSR00216.) They do not argue that they could prevail on their remaining four claims if review were limited to the administrative record in mandamus.[4] Rather, Real Parties seem to argue that the decisions they challenge are not entitled to the "deferential abuse of discretion standard" (Preliminary Opposition, p. 13), but instead should be measured against evidence outside the administrative record (see *id.*, pp. 8-11, 15). That argument, however, is contrary to California law and, as the Supreme Court has found, "would seriously undermine the finality of quasi-legislative administrative decisions." (*Western States Petroleum Assn. v. Superior Court* (1995)

(...continued)
cases, filed in 2009 and 2010, alleged unripe claims pursuant to Code of Civil Procedure section 526a, and were dismissed on those grounds.

[4] The Petition asserted that "Real Parties have essentially admitted they could not prevail in such a proceeding (Tab 8, HSR00215-HSR00216; Tab 197, HSR02907-HSR02909)." (Petition, p. 33.) The Preliminary Opposition does not dispute that statement.

9 Cal.4th 559, 578, hereafter "*Western States Petroleum.*")[5] Real Parties further concede that, even employing a non-deferential standard of review, their Section 526a claims "may well … turn out not to be provable at trial."[6] (Preliminary Opposition, p. 16.) This concession emphasizes the folly of a trial and the need for this Court's review. The Legislature and the voters gave the Authority quasi-legislative power to direct the development and implementation of the high-speed rail system. (Pub. Util. Code, §§ 185010, subd. (k), 185020, 185030-185034; Sts. & Hy. Code, §§ 2704.04-2704.09.) The Authority's exercise of that power may only be reviewed for abuse of discretion based on the administrative record. (*Carrancho v. California Air Resources Bd.* (2003) 11 Cal.App.4th 1255, 1265.)

A. Section 526a Does Not Permit Litigants to Challenge Discretionary Agency Actions in a Civil Trial with Extra-Record Evidence.

Real Parties argue that Section 526a is not a taxpayer standing statute but instead affords a right to a civil trial with extra-record evidence to challenge administrative decisions, although such a trial would be

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[5] Real Parties mistakenly cite *Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 415, for the proposition that agencies are entitled to no deference on questions involving statutory interpretation. (See Preliminary Opposition, pp. 14-15.) To the contrary, the Court stated that "a court gives weight to the agency's construction" of a statute that it is charged with implementing. (57 Cal.4th at p. 415.) Similarly, *California Hospital Ass'n v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 581, is not helpful to Real Parties, as it underscores that the *Western States Petroleum* decision applies broadly to quasi-legislative decisions, and held that the court should not have considered extra-record evidence because the agency held a hearing and there was an administrative record.

[6] Real Parties do not here identify the standard that should apply at trial, but before the superior court they argued for a preponderance of evidence standard. (Tab 240, HSR03473; Tab 273, HSR04214.)

impermissible in mandamus. (Preliminary Opposition, pp. 8-11.) As explained in the Petition, this argument is contrary to settled law. (Petition, pp. 33-37.)

If Real Parties were correct, then Section 526a would be an open invitation to avoid the boundaries of mandamus review. Under Real Parties' logic, any agency action could be labeled a waste of public funds, since even a small expenditure or threatened expenditure of public funds suffices to provide Section 526a standing. (See *Fiske v. Gillespie* (1988) 200 Cal.App.3d 1243, 1246.) All administrative agency decisions would then be subject to challenge in a trial complete with percipient and expert witnesses. (See *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1138-1139 [to allow action for waste for alleged mistake of public officials in matters involving exercise of discretion "would invite constant harassment . . . by disgruntled citizens"]; *Daily Journal Corp. v. City of Los Angeles* (2009) 172 Cal.App.4th 1550, 1558 [same].) But this is not the law.

Section 526a was intended to, and does, provide standing to assert a claim where it would otherwise be lacking, as the cases cited in the preliminary opposition demonstrate. (See *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1032 ["[T]he primary purpose of [Section 526a] … is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement"]; *accord Van Atta v. Scott* (1980) 27 Cal.4th 424, 447 [finding standing under Section 526a to bring action for violation of the due process clauses of the federal and California constitutions].) Because it is a standing statute and not a cause of action, the admissible evidence and standard of review depend on the underlying claim. In *Van Atta v. Scott*, *supra*, 27 Cal.4th 424, the underlying claim was a violation of

constitutional due process, and evidence necessarily may be taken in such cases. (See *People v. Ramirez* (1979) 25 Cal.3d 260, 268.) In *Tos*, Real Parties challenge the Authority's planning decisions—classic quasi-legislative decisions—as violating the Bond Act, and therefore the mandamus standard applies. (See *Nathan H. Schur, Inc. v. City of Santa Monica* (1956) 47 Cal.2d 11, 17-18 [holding that challenge to an administrative agency action had to be tried based on the administrative record even though claims were asserted under Section 526a]; accord *Daily Journal Corp. v. City of Los Angeles*, *supra*, 172 Cal.App.4th at pp. 1557-1558 [holding that Section 526a authorizes suit against public agency only if the agency had a ministerial duty to act].)

Challenges to quasi-legislative decisions that are alleged under Section 526a must be construed congruently with mandamus challenges to prevent the kind of end-run of mandamus review that Real Parties suggest. In *Nathan H. Schur, Inc. v. City of Santa Monica*, *supra*, 47 Cal.2d at pp. 11, 17-18, the Court held that a taxpayer challenging a licensing decision under Section 526a was not entitled to a trial de novo or to introduce extra-record evidence. The Court reasoned that a city agency making a quasi-judicial decision should not "be required to justify its action in a trial de novo in the court *whether the one attacking its determination is a taxpayer or one of the applicants for a license*. The local officials are vested with the power of determination and such determination is reviewable by mandamus or certiorari...." (*Id.* at p. 17, italics added.) To hold otherwise would give a litigant whose only interest in a controversy is as a taxpayer an advantage over litigants with a direct, personal interest in the controversy, but who happen not to be taxpayers—an absurd result.

Real Parties state that "while the bond measure gave the Authority discretion in <u>how</u> it met the measure's substantive requirements, ... it did not provide discretion as to <u>whether</u> to meet them." (Preliminary

Opposition, p. 14, underlining in original, citing *Hayward Area Planning Assn. v. Alameda County Transportation Authority* (1999) 72 Cal.App.4th 95, hereafter "*Hayward Area Planning*.") But this distinction does nothing to advance the argument that Section 526a supplies a broader remedy than mandamus. Instead, it illustrates why review of such decisions in mandamus is limited to the evidence in the administrative record. Because the Legislature has delegated to the agency the discretion to decide how to implement the law, litigants are never free to challenge *how* an agency exercises that discretion, unless it violates the law. All challenges to discretionary decisions are limited to *whether* the agency complied with applicable statutory or constitutional requirements; they may not challenge whether the agency chose the best way to do so. (See, e.g., *Western States Petroleum*, *supra*, 9 Cal.4th at pp. 555-567 [mandamus action alleging that regulations violated the California Environmental Quality Act]; *Calprop Corp. v. City of San Diego* (2000) 77 Cal.App.4th 582 [mandamus action alleging that city planning decision was an illegal taking].)

Real Parties' reliance on *Hayward Area Planning*, *supra*, is also misplaced. In that case, Caltrans stated its intention to defy the voter-approved bond act, arguing that its statutory authority overcame the requirements of the act. (72 Cal.App.4th at pp. 98-99, 107 & fn. 6.) In contrast, the Authority has never taken the position that it can ignore the requirements of the Bond Act. And although Real Parties rely *on Hayward Area Planning* to support the argument that "Claims under Code of Civil Procedure §526a are Properly Tried to Determine Contested Issues of Fact" (Preliminary Opposition, pp. 10-11), it is not a Section 526a case. *Hayward Area Planning* does not discuss Section 526a at all, not even to mention it in passing. And the court of appeal was not asked to and did not decide what evidence or standard of review was appropriate in the

proceedings on remand in that case. Consequently, *Hayward Area Planning* is inapposite here.

B. Real Parties' Claims Do Not Fall Within the Narrow Exception for Informal Agency Actions for Which No Administrative Record Exists.

In tacit recognition of the obstacles they face in overcoming the well-settled principles governing review of quasi-legislative actions, Real Parties argue that they can proceed in a civil trial under Section 526a and introduce evidence outside the administrative record because they are challenging "informal agency actions for which no administrative record exists." (Tab 449, HSR09568; see Preliminary Opposition, p. 11.) This Court has ruled, however, that the *Western States Petroleum* exception for "informal actions" is a narrow one that does not apply to planning decisions, like those of the Authority, which are made at public meetings, after opportunity for public comment, and based on an administrative record. (*Carrancho v. California Air Resources Bd.*, *supra*, 11 Cal.App.4th at p. 1270). As the court in *Carrancho* observed, "allowing extra-record evidence under these circumstances would encourage interested parties to withhold important evidence at the administrative level so as to use it more effectively to undermine the agency's action in court."[7] (*Id.* at p. 1271.)

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[7] In any event, the Second Amended Complaint ("Complaint"), is devoid of allegations that the Authority made any "informal decisions" within the meaning of *Western States Petroleum*. (Tab 292.) Real Parties cite to five paragraphs in the Complaint that they claim set forth their Section 526a cause of action, but none of these alleges any informal decision. (Preliminary Opposition, p. 10.) The trial brief in which Real Parties addressed their Section 526a claims also did not challenge any informal decisionmaking for which no administrative record exists. (See Tab 273.)

C. The Waste Claims, Which Real Parties Have Now Limited to the Federal Grant Funds, Lack Merit.

Real Parties now contend that their waste claims under Section 526a "relate *solely* to the federal grant funds that are being provided to the Authority by the Federal Railroad Administration." (Preliminary Opposition, p. 12, italics added.) But even if the Complaint alleged that the Authority's use of federal grant funds violated the Bond Act or Section 526a,[8] Real Parties' claim that use of those funds would be "wasteful" (Preliminary Opposition, p. 12) would not be cognizable under Section 526a. "Section 526a does not allow the judiciary to exercise a veto over the legislative branch of government merely because the judge may believe the expenditures are unwise, that the results are not worth the expenditure, or that the underlying theory of the Legislature involves bad judgment." (*Sundance v. Municipal Court*, *supra*, 42 Cal.3d at p. 1138; *Humane Society of U.S. v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 356; see Petition, pp. 33-37.) The wisdom of the Legislature's decision to allow federal grant funds to be used to construct a portion of the high-speed rail system is a political and legislative one, and is not subject to judicial review.[9]

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[8] The Complaint does not allege any claims for waste based on spending federal grant funds. (Tab 292.) Real Parties contend to the contrary, citing to paragraph 18 of the Complaint. That paragraph, however, alleges only that the Authority has spent more than $500 million on the Central Valley project, including more than $400 million in state bond proceeds. (*Id.*, HSR04818.)

[9] Further, *Tos* is an action for alleged violations of the Bond Act. (Tab 292, HSR04808.) The federal grant funds are not governed by the Bond Act, as the superior court correctly decided. (Sts. & Hy. Code, § 2704.07; Tab 6, HSR00093.) Thus, expenditure of federal bond funds cannot violate the Bond Act.

D. Even if Real Parties' Section 526a Claims Were Cognizable, They Would Not Be Ripe for Review.

The Petition explained that to the extent Real Parties challenge final decisions of the Authority, those challenges were resolved in the superior court's trial of the mandamus claims, and any other claims are not ripe—whether alleged in mandamus or as taxpayer claims for declaratory and injunctive relief. (Petition, pp. 38-41.) Real Parties' response boils down to their contention that on a motion for judgment on the pleadings a court is limited to the sufficiency of the complaint. (Preliminary Opposition, p. 15.) That is, because they allege a cause of action under Section 526a they are entitled to a trial on those claims. This argument fails because Real Parties have conceded that they are not challenging a formal agency action, and ripeness is a threshold issue that should be decided before trial.

1. Real Parties' Concession That They Are Not Challenging Formal Agency Action Demonstrates That Their Claims Are Not Ripe.

Real Parties' reasoning is inherently contradictory. On the one hand, they argue that they have non-writ claims that warrant an ordinary civil trial with extra-record evidence because they are challenging an informal agency decision *lacking an administrative record.* On the other hand, they argue their claims are ripe because a final decision on a blended system was made in the 2012 revised business plan. Adoption of the business plan, however, was a formal agency action (Pub. Util. Code, § 185033), *supported by an administrative record.*[10] Real Parties cannot have it both ways. Even if the

[10] The Authority's business plan is a planning document forecasting the Authority's long-term horizon, and is an evolving document that must be adopted at a public hearing and revised and submitted to the Legislature every two years. (Pub. Util. Code, § 185033.) Nothing in the business plan commits bond proceeds to any particular design feature.

business plan were a final decision on system-wide design and ripe for review (it is not), it could only be challenged in mandamus.

Real Parties state that the Authority has never taken formal action to approve the blended system. (Preliminary Opposition, p. 11.) But until there has been a formal and final decision committing bond proceeds for the construction of a blended system, the issue of whether a blended system is irreconcilable with the requirements of the Bond Act is not ripe. (See *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 708-709 [holding challenge to extension of water recycling program not ripe where city had not yet approved a specific use]; *Calprop Corp. v. City of San Diego*, *supra*, 77 Cal.App.4th at pp. 599-601 [holding challenge to land use plan not ripe where city had not made final decision regarding specific property].)

Even in the absence of a final decision committing bond proceeds to the blended system, or any system-wide design, Real Parties argue that they nevertheless allege a ripe controversy, because "the die had clearly been cast in favor of" a blended system before the Legislature appropriated bond proceeds in July 2012. (Preliminary Opposition, p. 11.) There is no support for this assertion. Real Parties cite an Authority presentation and a May 15, 2012 Senate Transportation and Housing Report. (Tab 374, HSR07253; Tab 269, HSR04179.) These documents, however, refer to the *contents of the Authority's revised 2012 business plan.* (Tab 373.) And that business plan does not represent a commitment of bond proceeds to any design decision. (See Petition, pp. 7-22, 38-41.)

Even if the business plan were a final design decision (and it is not), it could not be an informal, staff decision, because it must be adopted by the Authority in a public meeting. (See Pub. Util. Code, § 185033; Gov. Code, § 11120.) And there is an extensive administrative record, including review and public comment, relating to both the draft and the revised

business plans. (See Tabs 321-388, 390-397.) The revised business plan was the subject, not just of public comment and meetings of the Authority, but also of review by the Legislative Analyst, the Senate Transportation and Housing Committee, the Assembly Transportation Committee, the Senate and Assembly budget committees, and the Authority's peer review group. (Tabs 385, 392-396, 419, 420.) If Real Parties believed "the die was cast" on the design of the entire system with the approval of the revised 2012 business plan, it was incumbent on them to try those claims in mandamus based only on the administrative record. (*Western States Petroleum*, *supra*, 9 Cal.4th at pp. 572-573.)

2. Petitioners Are Not Required to Go to Trial to Have Real Parties' Claims Declared Unripe.

Real Parties also argue that Petitioners should have to argue ripeness at trial. (Preliminary Opposition, pp. 15-16.) For this proposition, they cite the superior court's statement that it was not reaching "any conclusions regarding whether [Real Parties] will be able to prove their claims." (Tab 455, HSR09597.) The superior court, however, did not suggest that it would decide the issue of *ripeness* at trial. It was merely emphasizing that its ruling was not on the merits of Real Parties' claims. The existence of a ripe controversy is a threshold question of law that must be decided as a prerequisite to judicial review. (See *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 169.) Because the claims, even if they were cognizable, would not be ripe, Petitioners should not be forced to defend them at trial.[11] (See *Hansra v. Superior Court* (1992) 7 Cal.App.4th

[11] Real Parties' Complaint does not allege a ripe controversy. Although they argue that claims that may have been unripe when they first filed *Tos* ripened by the time they filed the Complaint, the citations to the record do not support this. (Preliminary Opposition, p. 12.) The only

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630, 634.) And in the context of a challenge to quasi-legislative action, a ripeness determination must be made based on the administrative record, not extra-record evidence. (*Santa Teresa Citizen Action Group v. City of San Jose*, *supra*, 114 Cal.App.4th at pp. 706-709 [declining to consider proffered extra-record evidence, citing *Western States Petroleum*, *supra*, 9 Cal.4th at pp. 572-573, and holding that the record did not support a finding of a ripe controversy].)

(...continued)
decisions the Authority has made about the system design that are alleged in the Complaint are its approval of the first funding plan (Tab 292, HSR04812-HSR04813, HSR04817, HSR04819-HSR04829, HSR04832), its approval of the draft 2011 business plan and revised 2012 business plan (*id.*, HSR04811, HSR04816, HSR04820, HSR04823, HSR04826-HSR04829, HSR04832), and its appropriation request (*id.*, HSR04832). All of these decisions were addressed in the superior court's orders resolving the writ claims, and are currently pending this Court's review.

CONCLUSION

For the reasons set forth in the Petition and above, the Court should issue a writ of mandate directing the superior court to grant Petitioners' motion for judgment on the pleadings, and enter a final judgment in *Tos*.

Dated: April 11, 2014

Respectfully submitted,

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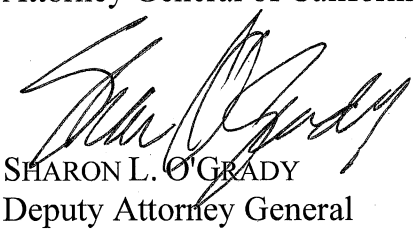

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CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE uses a 13 point Times New Roman font and contains 4,565 words.

Dated: April 11, 2014

KAMALA D. HARRIS
Attorney General of California

Stephanie Zook

STEPHANIE F. ZOOK
Deputy Attorney General
Attorneys for Petitioners

DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **California High-Speed Rail Authority, et al. v. Sacramento Superior Court**
No.: **C076042**

I declare:

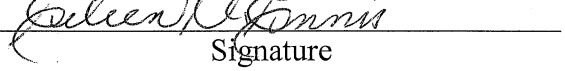
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, 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 the **Golden State Overnight (GSO)**. 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 11, 2014, I served the attached **REPLY TO PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE** by transmitting a true copy via electronic mail, and by placing a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, as shown below.

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 11, 2014, at Sacramento, California.

Eileen A. Ennis
Declarant


Signature

SERVICE LIST

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