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California High-Speed Rail Authority, et al.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
11

12 **JOHN TOS, AARON FUKUDA; AND**
13 **COUNTY OF KINGS, A POLITICAL**
14 **SUBDIVISION OF THE STATE OF**
CALIFORNIA,

15 Petitioners,

16 v.

17 **CALIFORNIA HIGH SPEED RAIL**
18 **AUTHORITY; JEFF MORALES, CEO OF**
19 **THE CHSRA; GOVERNOR JERRY**
20 **BROWN; STATE TREASURER, BILL**
21 **LOCKYER; DIRECTOR OF FINANCE,**
22 **ANA MATASANTOS; SECRETARY**
(ACTING) OF BUSINESS,
TRANSPORTATION AND HOUSING,
BRIAN KELLY; STATE CONTROLLER,
JOHN CHIANG; AND DOES I-V,
23 **INCLUSIVE,**

24 Respondents.
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Case No. 34-2011-00113919

**RESPONDENTS' OBJECTIONS TO
REQUEST FOR JUDICIAL NOTICE**

Date: February 11, 2016
Time: 9:00 a.m.
Dept: 31
Judge: The Hon. Michael P. Kenny

Action Filed: November 14, 2011

1 Respondents objects to Plaintiffs' Request for Judicial Notice as follows.

2 **REQUEST FOR JUDICIAL NOTICE ITEM NO. 1**

3 1. Respondents object to item No. 1, which asks the Court to take judicial notice
4 “[u]nder Evidence Code §§ 451(a) and 452(c), of the fact that, beginning in 2011, Congressional
5 appropriations have provided no funding for the California High Speed Rail Authority or its
6 project, or any other high-speed rail project, and in fact have rescinded prior funding for high-
7 speed rail projects.”

8 a. Respondents object on the grounds that the asserted “fact” is irrelevant to any
9 material issue in this case. “[A] precondition to the taking of judicial notice in either its
10 mandatory or permissive form [is that] any matter to be judicially noticed must be relevant
11 to a material issue.” (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th
12 415, 422 fn. 2, citing *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063,
13 overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1262.) The
14 amount of federal funding the Authority has received or is entitled to receive is
15 established in the grant agreements, which are in the administrative record. (AR 109-114.)
16 Whether any other high-speed rail projects have or have not received federal funding
17 (which cannot be determined based on the attached exhibits) is irrelevant to the claims at
18 issue in this case.

19 More fundamentally, where, as here, the Court is reviewing discretionary
20 administrative decisions, evidence that was not before the Authority when it made its
21 decisions is both improper and irrelevant. (*Western States Petroleum Assn. v. Superior*
22 *Court* (1995) 9 Cal.4th 559, 573 fn. 4; *County of Sacramento v. State Water Resources*
23 *Control Bd.* (2007) 153 Cal.App.4th 1579, 1589-1590); *Freeman v. Sullivant* (2011) 192
24 Cal.App.4th 523, 530-531 [denying judicial notice of a minute order in another
25 proceeding on the ground that it “is for the most part irrelevant to this appeal, as it is
26 outside the record on which the trial court’s judgment is based”].)

27 b. Respondents further object on the grounds that the asserted “fact” is not the
28 proper subject of judicial notice. Section 451(a) does not constitute grounds for judicial

1 notice because petitioners are not seeking judicial notice of a specific statute or statutes,
2 which in any event could be simply cited in petitioners' brief. (*Mangini v. R.J. Reynolds*
3 *Tobacco Co., supra*, 7 Cal.4th at p. 1064-1065.) Section 452(c) also does not constitute a
4 basis for judicial notice because petitioners do not ask the Court to take judicial notice of a
5 an official act, but rather the truth of a sweeping factual statement, and the attached
6 documents do not establish the truth of that broad statement.

7 **REQUEST FOR JUDICIAL NOTICE ITEM NO. 5**

8 2. Respondents object to item No. 5, which asks the Court to take judicial notice
9 “[u]nder Evidence Code 452(c) and (h), of the mapping by the California Department of
10 Transportaion of California urban areas, as defined by the U.S. Census bureau [sic], which
11 mapping has been integrated into a set of on-line databases accessible through Google Earth at the
12 URL: <http://earth.ca.gov/>, and of the measurements of approximate distances along the proposed
13 California high-speed rail right of way through California urban areas made using that database.”

14 a. Respondents object on the grounds that the “mapping” is irrelevant to any
15 material issue in this case. “[A] precondition to the taking of judicial notice in either its
16 mandatory or permissive form [is that] any matter to be judicially noticed must be relevant
17 to a material issue.” (*People ex rel. Lockyer v. Shamrock Foods Co., supra*, 24 Cal.4th at
18 p. 422 fn. 2, citing *Mangini v. R.J. Reynolds Tobacco Co., supra*, 7 Cal.4th at p. 1063.)
19 Mapping on-line databases prepared by Caltrans for its public website is irrelevant to the
20 claims at issue in this case.

21 More fundamentally, where, as here, the Court is reviewing discretionary
22 administrative decisions, evidence that was not before the Authority when it made its
23 decisions is both improper and irrelevant. (*Western States Petroleum Assn. v. Superior*
24 *Court, supra*, 9 Cal.4th at p. 573 fn. 4; *County of Sacramento v. State Water Resources*
25 *Control Bd., supra*, 153 Cal.App.4th at pp. 1589-1590.) Such evidence is irrelevant.
26 (*Freeman v. Sullivant, supra*, 192 Cal.App.4th at pp. 530-531 [denying judicial notice of a
27 minute order in another proceeding on the ground that it “is for the most part irrelevant to
28 this appeal, as it is outside the record on which the trial court’s judgment is based”].)

1 The Court denied petitioners' motion to augment the record with other maps because
2 they were not documents relied upon by the Authority in making the decisions being
3 challenged in this matter. (Ruling on Submitted Matters: Motion to Augment
4 Administrative Record and Motion to Compel Further Responses, August 18, 2015 at
5 pp. 4-5, 7-8.) These maps should be rejected for the same reason.

6 b. Respondents further object on the grounds that petitioners proffer the evidence
7 to contradict the Authority's own expert analysis. (See Opening Br., p. 19.) "[E]xtra-
8 record evidence can never be admitted merely to contradict the evidence the
9 administrative agency relied on in making a quasi-legislative decision or to raise a
10 question regarding the wisdom of that decision." (*Western States Petroleum Assn. v.*
11 *Superior Court, supra*, 9 Cal.4th at p. 579.)

12 c. Respondents further object on the grounds that petitioners have failed to
13 comply with California Rule of Court 3.1306, subdivision (c), which provides, in relevant
14 part: "A party requesting judicial notice of material under Evidence Code section 452 or
15 453 must provide the court and each party with a copy of the material." Petitioners have
16 provided only a screenshot of one "example measurement," and direct the parties and the
17 Court to a website for the complete set of mapping databases.

18 This rule is a substantive requirement, not a technicality. Documents at URL
19 addresses frequently change; therefore, the only way to ensure that the parties, the trial
20 court, and any reviewing court are all looking at the same documents is to attach copies of
21 them. The URL petitioners cite is a good example because it has already changed. The
22 URL, <http://www.dot.ca.gov>, is now a general link to a Caltrans Earth web page, which
23 invites visitors to download and install the Google Earth Plug-in, and provides a link for
24 doing so. However, that link is disabled because, according to a notice posted on the
25 Caltrans Earth Overview web page,
26 http://www.dot.ca.gov/hq/tsip/gis/caltras_earth/overview.php, Google retired its plug-in
27 software on December 12, 2015. That same webpage states:
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1 Currently we are determining the future direction of Caltrans Earth as a web-
2 based, spatial data access solution. The Caltrans Earth website
3 (earth.dot.ca.gov) will be updated as events occur.

4 (*Ibid.*)


5 c. Respondents further object on the grounds that petitioners seek judicial notice,
6 not just of the existence of the maps, but the accuracy of the “urban areas” designated
7 therein, which is not properly subject to judicial notice. Even when courts take judicial
8 notice of public records, they do not take judicial notice of the truth or accuracy of the
9 factual matters stated therein. *Mangini v. R.J. Reynolds Tobacco Co.*, *supra*, 7 Cal.4th
10 1057, 1063; *Searles Valley Minerals Operations, Inc. v. State Bd. of Equalization* (2008)
11 160 Cal.App.4th 514, 519 [holding that even where it “might be appropriate to take
12 judicial notice of *the existence* of” two websites, including that of the U.S. Department of
13 Energy, “the same is not true of their factual content”].) For example, the court refused to
14 take judicial notice of the contents of a California State Auditor’s report under Evidence
15 Code section 452, subdivisions (c) and (h), holding that, “[b]eyond the mere fact that the
16 report exists, the availability of the report on the Internet hardly renders the content of the
17 report ‘not reasonable subject to dispute.’ ” (*Conlan v. Shewry* (2005) 131 Cal.App.4th
18 1354, 1364 fn. 5.) Petitioners cite no authority for the proposition that the term “urban
19 areas” is susceptible of a single, undisputed meaning which corresponds to the 2010
20 “urban areas” shown on Caltrans maps, and it is not. Petitioners also cite no authority in
21 support of their argument that the extent and location of 2010 urban areas shown on the
22 maps is subject to judicial notice merely because the Authority referred generally to
23 “urban areas” in a 2011 presentation to the Los Angeles Chamber of Commerce. (See
24 Request for Judicial Notice, p. 4; AR 526:022216.)

25 d. Finally, respondents object to the sample screenshot which is exhibit H to the
26 Request for Judicial, because it is not a true and correct copy of a government map, but
27 instead has been altered, as petitioners acknowledge. (See Request for Judicial Notice,
28 p. 2.)

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Dated: January 15, 2016

Respectfully Submitted,
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SA2011103275

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: *Tos, et al. v. California High Speed Rail Authority, et al.*

No.: 34-2011-00113919

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: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On January 15, 2016, I served the attached **RESPONDENTS OBJECTIONS TO REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT**, addressed as follows:

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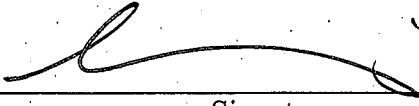
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 15, 2016, at San Francisco, California.

Susan Chiang

Declarant



Signature