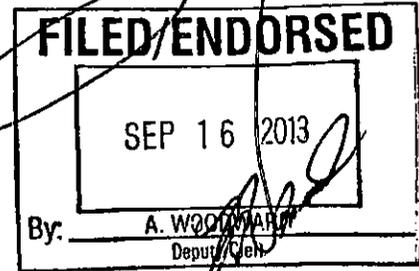


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7 EXEMPT FROM FILING FEE
8 GOV'T CODE § 6103

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 JOHN TOS; AARON FUKUDA; and)
COUNTY OF KINGS,)

12 Plaintiffs,)

13 v.)

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

20 Defendants.)

Case No. 34-2011-00113919
(filed 11/14/2011)

OPENING BRIEF OF AMICUS CURIAE
KINGS COUNTY WATER DISTRICT
ON REMEDIES AFTER COURT
RULING ON SUBMITTED MATTER:
PETITION FOR WRIT OF MANDATE;
AND IN SUPPORT OF PLAINTIFFS'
REMEDIES BRIEF

DATE: November 8, 2013
TIME: 9:00 a.m.
DEPT: 31
JUDGE: Hon. Michael P. Kenny

BY FAX

21 **I. INTRODUCTION.**

22 Amicus Kings County Water District focused in its amicus brief on the "financial protection
23 provisions" of Prop. 1A. These financial protection provisions are essential to protect the voters and
24 taxpayers from the cost overruns typical of large public works project.

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1 Former Speaker Brown described in his July 28, 2013 column in the San Francisco Chronicle
2 how large public projects tend to develop their own momentum with costs spiraling far beyond initial
3 numbers:

4 News that the Transbay Terminal is something like \$300 million over budget should not come
5 as a shock to anyone. We always knew the initial construction estimate was way under the real
6 cost. Just like we never had the real cost for the Central Subway or the Bay Bridge or any other
7 massive construction project. So get off it. In the world of civic projects, the first budget is
really just a down payment. If people knew the real cost from the start, nothing would ever get
approved. The idea is to get going. Start digging a hole and make it so big, there is no
alternative to coming up with the money to fill it in.

8 The tendency described in this statement makes it all the more imperative that the Court impose
9 a strong, effective, rigorous remedy on the Authority for the violations of Prop. 1A found in the Ruling.
10 The Authority has a tendency to continue to take steps¹ that can only be described as attempting to create
11 a situation where the processes are the court become "overtaken by events" or become fait accompli.
12 This tendency must be checked and a time out called, to ensure that the Authority henceforth proceeds
13 in the manner required by law. Otherwise, the Authority becomes beyond the reach of law by virtue of
14 the on-rush of events.

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18 _____
19 ¹Such as purportedly awarding or entering into a contract with Tutor Perini-Parsons-Zachry
20 for construction of the 29 mile Madera to Fresno segment of the project. During the first hearing
(May 10, 2013) on the Authority's motion to consolidate the Prop. 1A case with the validation
action, counsel for the Authority stated:

21 MS. INAN: Your Honor, this is a living project. And to some extent plans change every
22 day. Right now the only plan is to award that contract in mid-July. But no bond funds can
23 be extended legally without the validation action being completed because the bonds can't be
24 sold and there has to be a second funding plan submitted to the director of the Department of
Finance, and that's not yet occurred. And it's not going to occur tomorrow. Transcript at
14:17-24 (emphasis added).

25 MS. INAN: I don't think I have anything to add besides what I've already told you, that the
State is spending federal monies to purchase right-of-ways in the Central Valley. And it may
26 be moving around some dirt this summer, but it will only be with federal funds because no
state funds can be used until everything is resolved. Id. at 18:5-10 (emphasis added).

1 **II. A WRIT SHOULD ISSUE COUPLED WITH OTHER REMEDIES TO ENSURE THAT**
2 **HENCEFORTH THE AUTHORITY PROCEEDS IN THE MANNER REQUIRED BY**
3 **LAW-BY PROP. 1A.**

4 It is clear that the writ should issue. Code of Civil Procedure § 1085 authorizes courts to issue
5 a writ of mandate to compel the performance of an act that the law specifically requires. Public
6 Defender Ass'n v. Bd. of Supervisors (1999) 74 Cal. App. 4th 1327, 1331. Writ relief is available to
7 compel a public officer to perform a mandatory, ministerial act. Common Cause v. Board of Supervisors
8 (1989) 49 Cal. 3d 432, 442; Sego v. Santa Monica Rent Control Bd. (1997) 57 Cal. App. 4th 250, 255.

9 Mandamus is also available to compel a public agency to perform an act prescribed by law.
10 Santa Clara County Counsel Attys. Assn. v. Woodside (1994) 7 Cal 4th 525. It is available to compel
11 a public agency's performance or correct an agency's abuse of discretion whether the action being
12 compelled or corrected can itself be characterized as "ministerial" or "legislative." Id. Once the
13 Legislature has created a duty in a public agency, a court may not limit, on public policy grounds, the
14 availability of a writ of mandate to enforce that duty. Id.

15 While the writ of mandamus is, in a measure, a discretionary writ, and will not issue where its
16 enforcement would work an injustice or accomplish a legal wrong, where one has a substantial right
17 enforceable by mandamus and which cannot otherwise be enforced and a failure of justice would result
18 in refusing it, he is entitled to the writ as a matter of right, or, in other words, it would be an abuse of
19 discretion to refuse it. Williams v. Stockton (1925) 195 Cal. 743, 749 (citations omitted). Thus, where
20 a sufficient showing of duty and substantial right is made, and no other adequate remedy is available,
21 the "discretion" to deny the writ practically disappears. 8 Witkin Cal. Proc. (5th ed.), Extraordinary
22 Writs, § 74. The petitioner is then entitled to the writ "as a matter of right." Id.

23 Further, where a party has a clear legal right, a court should not withhold the writ because such
24 party may be ultimately unsuccessful in gaining the relief sought. Lindsay Strathmore Irrigation Dist.
25 v. Superior Court of Tulare County (1932) 121 Cal. App. 606, 610-611.

26 Here plaintiffs and amicus have the clear legal right to have the provisions of Prop. 1A, approved
by the electorate, enforced by this court.

1 On August 16, 2013, in its Ruling on Submitted Matter: Petition for Writ of Mandate," the Court
2 found that defendants High-Speed Rail Authority ("Authority") et al. had failed to proceed in the manner
3 required by law, and were in violation of the following provisions of Prop. 1A:

- 4 1. that the funding plan does not comply with the plain language of Section
5 2704.08(c)(2)(D), because it does not properly identify sources of funds for the entire
6 IOS. Ruling p. 9, ll. 12-13.
- 7 2. the Authority's contention that its certification complied with the substance of the
8 funding plan reporting requirement for environmental clearances is unpersuasive. The
9 substance of that requirement is amply clear from the language of the statute itself: the
10 Authority is to certify that project level environmental clearances are complete. A
11 certification that such clearances will be completed by some later date obviously fails to
12 comply. Ruling p. 11, ll. 2-6 (referring to section 2704.08(c)(2)(K) requiring the funding
13 plan to certify that "The Authority has completed all necessary project level
14 environmental clearances necessary to proceed to construction").

15 These violations were simple, straightforward and apparent from the plain language of the
16 statute. Such facial statutory violations² should be subject to clear, simple, strong remedies.

17 _____
18 ²The Ruling also addresses the significant point that "the funding plan as a whole is required
19 to address the "corridor, or usable segment thereof", and not some portion of that corridor or
20 segment. The reference to "construction" in subsection (K) therefore is most reasonably interpreted
21 as pertaining to the entire "corridor, or usable segment thereof" addressed by the funding plan, and
22 not to the ICS, which is merely a portion of that corridor or usable segment." Ruling, p. 10, ll. 5-10.

21 This is significant because the Authority is segmenting the project illegally in funding,
22 planning and construction. Section 2704.04(a)(3)(A)-(G) authorized seven "high-speed train
23 corridors" which do not include a separate Merced to Bakersfield "corridor" or a Merced to Fresno
24 "corridor" or a Fresno to Bakersfield "corridor." Stand alone Merced-Fresno or Fresno-Bakersfield
25 sections at most might be considered "useable segment[s]" under § 2704.01(g), but are not
26 authorized for separate funding under § 2704.04(a)(3). Moreover, a useable segment must be a
portion of a corridor which in turn is a portion of the high-speed train system. If the Authority is
proposing separate Merced-Fresno or Fresno-Bakersfield as (potentially) stand alone "sections,"
these projects are not legally fundable with bonds sold under the authority of Proposition 1A. There
is no authority under Proposition 1A to build stand alone segments or sections of "high speed train
corridors" without building the entire California High Speed Train Project of which the recognized
corridors are a part. Therefore, the ambiguity for purposes of the project description exists with

1 Civil Code § 3523 states: "For every wrong there is a remedy."³ The Authority has violated
2 simple fundamental provisions of Prop. 1A. The remedies imposed need to be clear and strong. These
3 would include:

- 4 1. An order granting the petition for writ of mandate;
- 5 2. An order directing the Authority to set aside the funding plan, and to prepare a new and different
6 or revised funding plan to conform to the requirements of Prop. 1A and in conformity with the
7 views expressed in the Ruling;
- 8 3. An order restraining the Authority from preparation of the second funding plan until the original
9 funding plan has been revised; submitted to the Court and approved on the return and discharge
10 of the writ;
- 11 4. An order directing the Authority to account for expenditure of moneys spent to date; the amounts
12 and sources of such funds;
- 13 5. An order directing an accounting of the amounts of State moneys expended to date and their
14 sources;
- 15 6. An order directing an accounting of the amounts of federal moneys expended to date and their
16 sources;
- 17 7. An order directing an accounting of such funds expended to date under the provisions of Streets
18 & Highways Code § 2704.08(d).

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22 respect to whether the "Project" is the full HSR state wide project (as suggested by the title of the
23 DEIR/DEIS) or as a standalone project or segment or section which cannot be funded as such with
24 Proposition 1A bond funds.

25 ³Prop. 1A was illegally put on the ballot in the first place; AB 3034 violated provisions of
26 the Political Reform Act of 1974 in the manner by which Prop. 1A was placed on the November 4,
2008 general election ballot. See Howard Jarvis Taxpayers Association v. Debra Bowen, et al.
(2011) 192 Cal.App.4th 110. In that case an effective remedy could not be had due to the time
needed for adjudication. That should not be the case here.

1 8. An order directing an accounting of such funds expended to date under the "safe harbor"
2 provisions of Streets & Highways Code § 2704.08(g).

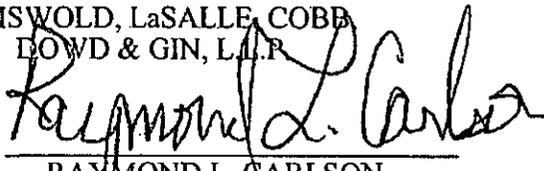
3 **III. CONCLUSION AND JOINDER IN PLAINTIFFS' OPENING BRIEF ON REMEDIES**
4 **AND PROPOSED ORDER.**

5 The Court's Ruling describes simple, prima facie violations of Prop. 1A. The relief granted as
6 described above will assure that the violations are fully addressed and remedied, and that the "financial
7 protection provisions" of Prop. 1A are enforced. Any claim of "urgency" by the Authority, that to
8 comply with the law will take too much time, and so on, falls on deaf ears. If the Authority is now short
9 of time, that is it's problem. It is not the problem of the Court, plaintiffs, or amicus. If the Authority
10 has acted or undertaken commitments beyond present circumstances, if it has gotten "ahead of itself,"
11 again that is the Authority's problem.

12 This case was filed in November 2011 precisely to make sure that Prop. 1A was followed as
13 intended by the voters, who pledged their tax money for the rail project. The pendency and hazard of
14 litigation was known to the Authority since that filing. The Authority recently sought to consolidate this
15 case with the much more recently filed "validation" action. Had that motion been granted, more delay
16 in hearing the writ phase of the case would have ensued. The Authority cannot now be heard to claim
17 that time is short.

18 Amicus also joins in plaintiffs' opening brief on remedies and anticipated proposed order.

19 DATED: September 16, 2013.

20 Respectfully Submitted,
21 GRISWOLD, LaSALLE, COBB
22 DOWD & GIN, L.L.P.
23 By: 
24 RAYMOND L. CARLSON
25 Attorneys for Amicus Curiae
26 KINGS COUNTY WATER DISTRICT

1 PROOF OF SERVICE
2 CCP §§ 1011, 1013, 1013a, 2015.5; FRCP 5(b)

3 I am employed in the County of Kings, State of California. I am over the age of 18 years and not
4 a party to the within action; my business address is 111 E. Seventh Street, Hanford, CA 93230.

5 On, September 16, 2013, I served the following document(s): OPENING BRIEF ON
6 REMEDIES OF AMICUS CURIAE KINGS COUNTY WATER DISTRICT AFTER COURT ISSUE
7 OF RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF MANDATE; AND IN
8 SUPPORT OF PLAINTIFFS' REMEDIES BRIEF on the interested parties in this action by placing a
9 true and correct copy thereof enclosed in a sealed envelope addressed as follows:

7 S. Michele Inan, Deputy Attorney General Attorneys for Respondents and Defendants
8 OFFICE OF THE ATTORNEY GENERAL Telephone: (415) 703-5474
9 455 Golden Gate Ave., Suite 11000 Facsimile: (415) 703-5480
10 San Francisco, CA 94102 E-mail: michele.inan@doj.ca.gov

9 Michael J. Brady Attorney for Plaintiffs and Petitioners
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12 E-mail: mbrady@rmkb.com

12 Stuart M. Flashman Attorney for Plaintiffs and Petitioners
13 LAW OFFICES OF STUART M. FLASHMAN Telephone/Facsimile: (510) 652-5373
14 5626 Ocean View Drive E-mail: stu@stufash.com
15 Oakland, CA 94618-1533

15 (By Mail) As follows: I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal
17 Service on the same day with postage thereon fully prepaid at Hanford, California, in the ordinary course
18 of business.

17 (By Mail) I deposited such envelope in the United States mail at Hanford, California. The
18 envelope was mailed with postage thereon fully prepaid.

19 (By Overnight Delivery) I deposited such envelope in the Federal Express/UPS Next Day
20 Air/U.S. Mail Express Mail depository at Hanford, California. The envelope was sent with delivery
21 charges thereon fully prepaid.

20 (By Electronic Mail) I caused such documents to be sent to the stated recipient via electronic
21 mail to the e-mail address as stated herein.

22 (By Personal Service) I caused such envelope to be hand delivered to the offices of the
23 addressee(s) shown above.

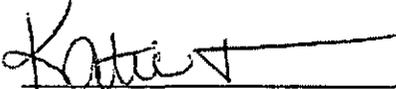
24 (By Facsimile) I caused each document to be delivered by electronic facsimile to the offices
25 listed above.

25 (State) I declare under penalty of perjury, under the laws of the State of California, that the
26 foregoing is true and correct.

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(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 16, 2013, at Hanford, California.


KATIE ASKINS