

1 MICHAEL J. BRADY (SBN 40693)
1001 MARSHALL STREET, STE. 500
Redwood City, CA 94063-2052
2 Telephone (650) 364-8200
Facsimile: (650) 780-1701
3 Email: mbrady@rmkb.com

4 LAW OFFICES OF STUART M. FLASHMAN
STUART M. FLASHMAN (SBN 148396)
5 5626 Ocean View Drive
Oakland, CA 94618-1533
6 TEL/FAX (510) 652-5373
Email: stu@stuflash.com

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GOVERNMENT CODE §6103

7 Attorneys for Plaintiffs and Plaintiffs
8 JOHN TOS; AARON FUKUDA;
AND COUNTY OF KINGS
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JOHN TOS, AARON FUKUDA, and COUNTY
OF KINGS,
13 Plaintiffs
14 v.
CALIFORNIA HIGH SPEED RAIL Authority *et*
15 *al.*,
Defendants

No. 34-2011-00113919 filed 11/14/2011
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31
[proposed] ORDER ON REMEDIES IN
MANDAMUS CAUSES OF ACTION

Date: November 8, 2013
Time: 9:00 AM
Dept. 31
Judge: Hon. Michael P. Kenny

19 Pursuant to the stipulation of the parties and the Court's order of August 29, 2013, this
20 matter came on regularly for hearing on November 8, 2013 at 9:00 AM. Stuart M. Flashman,
21 Esq. and Michael J. Brady, Esq. appeared on behalf of plaintiffs John Tos, Aaron Fukuda, and
County of Kings. Michele Inan, Deputy Attorney General, appeared on behalf of Defendants
22 California High-Speed Rail Authority et al. Raymond L. Carlson of the firm Griswold, LaSalle,
23 Cobb, Dowd & Gin, LLP appeared on behalf of amicus curiae Kings County Water District.

24 Having read and considered the papers submitted by the parties and the argument at
25 hearing, and good cause appearing therefor, the Court rules as follows:
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1 1. Plaintiffs’ request for judicial notice of portions of Respondent High-Speed Rail
2 Authority’s contracts with the California Department of Transportation and with Tudor-Perini-
3 Parsons is GRANTED.

4 2. The Court finds that this Court is in a position to be able to grant real practical
5 relief in response to plaintiffs’ petition for writ of mandate through issuance of a peremptory writ
6 of mandate ordering Respondent California High-Speed Rail Authority to rescind its approval of
7 its funding plan, approved on November 3, 2011, if that relief is coupled to other remedial
8 actions. The Court further finds that such relief is necessary to defend the voters’ intent in
9 approving Proposition 1A in November 2008. THEREFORE, the Court GRANTS relief to
10 plaintiffs John Tos *et al.* on their mandamus causes of action as follows:

11 a. A writ of mandate shall issue under seal of the Court directed to Respondent
12 California High-Speed Rail Authority. The writ shall command Respondent High-Speed Rail
13 Authority to set aside its decisions of November 3, 2011 approving and issuing a funding plan
14 for an initial operating segment of the California High-Speed Rail System. Those decisions are
15 remanded to said Respondent for reconsideration in accordance with the provisions of
16 Proposition 1A, this Court’s Ruling on Submitted Matter of August 16, 2013, and the
17 declarations of this Court contained herein. Within sixty days of the service of said writ, said
18 Respondent shall file a return with the Court demonstrating its compliance;

19 b. Respondent California High-Speed Rail Authority is hereby permanently enjoined
20 and prohibited from preparing and approving a detailed funding plan as provided for in Streets &
21 Highways Code §2704.08(d) unless and until it has first approved a funding plan under
22 §2704.08(c) that fully complies with the requirements of that subsection to the satisfaction of the
23 Court;

24 [one of the following two alternatives]

25 c. A writ of mandate shall issue under seal of the Court directed to Respondent
26 California High-Speed Rail Authority. The writ shall command Respondent High-Speed Rail
27 Authority to set aside its decisions of approving contracts between said Respondent and the
28 California Department of Transportation and Tudor-Perini-Parsons, respectively, for
29 construction and related for on Respondent’s Initial Construction Segment. Those decisions are
30 remanded to said Respondent for reconsideration in accordance with the provisions of
Proposition 1A, this Court’s Ruling on Submitted Matter of August 16, 2013, and the

1 declarations of this Court contained herein. Within sixty days of the service of said writ, said
2 Respondent shall file a return with the Court demonstrating its compliance;]

3 [c. Respondent California High-Speed Rail Authority is hereby permanently enjoined
4 and prohibited from expending, or entering into commitments to expend, any Proposition 1A
5 bond fund towards the construction of the Initial Operating Segment – South, with the exception
6 of those funds authorized under Streets and Highways Code §2704.08(g), until such time as it
7 has fully complied with the provisions of §2704.08(c) and (d) to the Court’s satisfaction;]

8 d. Respondent California High-Speed Rail Authority is temporarily restrained from
9 expending any of the federal American Recovery and Reinvestment Act funds granted to said
10 Respondent and designated for the construction of the Initial Construction Segment of the High-
11 Speed Rail System until such time as the Court has heard and decided Plaintiffs’ causes of action
12 under Code of Civil Procedure §526a in this case;

13 e. Respondent California High-Speed Rail Authority shall, within thirty days of the
14 service of this order upon it, provide to the Court a full and complete accounting of its use of
15 Proposition 1A bond funds, including its past expenditures of such funds, its current
16 commitments to future expenditures of such funds, and its plans for committing or expending
17 such funds during the next two years. The accounting shall specifically include the following
18 categories of proposed, committed, or expended funds: construction activities, acquisition of
19 land or equipment, preliminary engineering, planning, environmental studies, mitigation of
20 environmental impacts, and relocation expenses;

21 f. The judgment to be entered in these proceedings shall include the following
22 declarations:

23 i. Any funding plan prepared and approved by Respondent High-Speed Rail
24 Authority for a corridor or usable segment thereof in accordance with the provisions of Streets
25 and Highways Code §2704.08(c) must identify the sources of all funds to be invested in the
26 corridor or usable segment thereof and the anticipated time of receipt of those funds based on
27 expected commitments, authorizations, agreements, allocations, or other means, and must certify
28 that, based on reasonable expectations of receiving those funds, Respondent California High-
29 Speed Rail Authority can complete construction of that corridor or usable segment thereof as
30 proposed in the funding plan;

1 ii. Any funding plan prepared and approved by Respondent High-Speed Rail
2 Authority for a corridor or usable segment thereof in accordance with the provisions of Streets
3 and Highways Code §2704.08(c) must certify that Respondent High-Speed Rail Authority has
4 completed all project level environmental clearances for that corridor or usable segment thereof
5 necessary to proceed to construction of the full corridor or usable segment thereof;

6 iii. The provisions of Streets and Highways Code §2704.08(d), as they would apply
7 to any corridor or usable segment thereof being considered for construction by Respondent
8 California High-Speed Rail Authority, must be preceded by and based upon a funding plan
9 previously prepared and approved by Respondent California High-Speed Rail Authority for that
10 same corridor or usable segment thereof pursuant to §2704.08(c) that fully complies with the
11 provisions of that subsection.

12 IT IS SO ORDERED

13 Dated: _____, 2013

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Hon. Michael P. Kenny
Judge of the Superior Court