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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12
13 **HIGH-SPEED RAIL AUTHORITY and
HIGH-SPEED PASSENGER TRAIN
14 FINANCE COMMITTEE, for the STATE
OF CALIFORNIA,**

15 Plaintiffs,

16 v.

17
18 **ALL PERSONS INTERESTED IN THE
MATTER OF THE VALIDITY OF THE
19 AUTHORIZATION AND ISSUANCE OF
GENERAL OBLIGATION BONDS TO BE
20 ISSUED PURSUANT TO THE SAFE,
RELIABLE HIGH-SPEED PASSENGER
21 TRAIN BOND ACT FOR THE 21ST
CENTURY AND CERTAIN
22 PROCEEDINGS AND MATTERS
RELATED THERETO,**

23 Defendants.
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Case No. 34-2013-00140689

ASSIGNED FOR ALL PURPOSES TO
HONORABLE MICHAEL P. KENNY
DEPARTMENT 31

**HIGH-SPEED RAIL AUTHORITY AND
HIGH-SPEED PASSENGER TRAIN
FINANCE COMMITTEE'S OPENING
TRIAL BRIEF IN SUPPORT OF
VALIDATION JUDGMENT**

Date: September 27, 2013
Time: 9:00 a.m.
Dept: 31
Judge: Hon. Michael P. Kenny
Trial Date: September 27, 2013
Action Filed: March 19, 2013

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INTRODUCTION

Code of Civil Procedure section 860 et seq. (the "Validation Statutes") permits public agencies to quickly and conclusively confirm the validity of their bonds and authorizing actions. Plaintiffs High-Speed Rail Authority (the "Authority") and High-Speed Passenger Train Finance Committee (the "Committee"), for the State of California ("State"), brought this validation action to confirm the validity of high-speed rail bonds they recently authorized. The fact that ten parties have opposed this validation action underscores its necessity. Bond issuances for infrastructure projects are usually routine matters, but opponents of the high-speed rail project are using every device available to halt its progress. To secure the certainty that underwriters, purchasers, and the State as bond issuer require, a validation judgment is needed to ensure that the bonds themselves cannot be called into question in future litigation.

Although the *bonds and resolutions at issue are unquestionably valid*, Plaintiffs anticipate that Defendants will argue that bond *proceeds will be spent* on a project that is allegedly different from the project specified in Proposition 1A on the November 4, 2008 General Election ballot. Leaving the merits of these claims aside, Plaintiffs do not seek to validate the *use* of the bond proceeds, only the bonds themselves. Any challenges to how the bond proceeds can be spent may be brought later and have no impact on this validation action.¹

Defendants may also assert that Plaintiffs need to prove in this validation action their consideration of "program funding needs, revenue projections, financial market conditions, and other necessary factors in determining the term for the bonds to be issued." (See Sts. & Hy. Code, § 2704.13.) However, these issues involving market conditions and maturity dates cannot be determined until the validation action is complete and each series of bonds is offered for sale.² Put simply, the appropriate maturity date for individual bond series cannot be established until the

¹ In fact, in a related non-validation action, the *Tos* defendants are already challenging the State's expenditures on the high-speed rail project. (See *Tos, et al. v. California High-Speed Rail Authority, et al.*, Sacramento Superior Court Case No. 34-2011-00113919.)

² Given the amount of bonds authorized by the voters (\$9 billion), the complexity and scope of the high-speed rail project, and historical practice in issuing State debt, these bonds will be issued in multiple series, in various amounts, and over many years. (See Declaration of Geoffrey Palmertree in Support of Plaintiffs' Opening Trial Brief, filed herewith, Ex. B, art. V, §§ 5.01, 5.02.)

1 bonds are marketed, which can only occur after validation. The Committee has properly fixed a
2 maturity date not to exceed 35 years for all the authorized bonds, and exercised its statutory
3 discretion to delegate to the Treasurer the duty to determine, at the appropriate time, the specific
4 maturity date for each series of bonds in accordance with Streets and Highways Code sections
5 2704.11, subdivision (b) and 2704.13. Thus, any challenge based on the Committee's
6 consideration of these factors (or alleged lack thereof) is misplaced.

7 The scope of this validation action is narrow and the procedural requirements for proper
8 bond authorization are minimal. Other than being related to the high-speed rail project, which
9 generates attention, these bonds are no more complex or controversial than any routine state bond
10 issuance. Plaintiffs properly and lawfully authorized the bonds at issue in this action.
11 Accordingly, judgment validating these bonds is warranted.

12 **FACTUAL AND LEGAL BACKGROUND**

13 The movement to build high-speed rail in California began years before the passage of
14 Proposition 1A. In 1996, the Legislature enacted the California High-Speed Rail Act, which
15 established the Authority. (Pub. Util. Code, §§ 185000, 185010, subd. (h), 185020.) The
16 Authority's duties include planning construction of a high-speed rail system. (*Id.*, §§ 185010,
17 subd. (h), 185032.) In August 2008, the Legislature passed and the Governor signed Assembly
18 Bill 3034. (Stats. 2008, ch. 267.) Section 9 of AB 3034 was placed on the November 4, 2008
19 General Election ballot as Proposition 1A. The voters enacted Proposition 1A, codified as the
20 Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, Streets and Highways
21 Code section 2704 et seq. (the "Bond Act"). The Bond Act authorizes the issuance and sale of
22 bonds and other obligations by the State, in a principal amount of up to nine billion dollars
23 (\$9,000,000,000), in order to fund the construction of a high-speed train system in California.
24 (Sts. & Hy. Code, §§ 2704.04, subs. (b)-(c), 2704.06.) The Bond Act also created the
25 Committee for the purpose, among other things, of authorizing the issuance and sale of these
26 bonds. (*Id.*, § 2704.12.)

27 At its publicly noticed March 18, 2013 meeting, the Authority adopted a resolution
28 requesting the Committee to authorize the issuance of bonds, commercial paper notes, and

1 refunding bonds under the Bond Act. (Declaration of Angela Reed in Support of Plaintiffs’
2 Opening Trial Brief, filed herewith (hereafter Reed Decl.), ¶¶ 2-3, Exs. A-B.) Later that day, at
3 its publicly noticed meeting, the Committee adopted its Resolution IX, entitled, “High-Speed
4 Passenger Train Finance Committee, Resolution IX (2013),” authorizing the issuance of State of
5 California High-Speed Passenger Train Bonds or Commercial Paper Notes in the principal
6 amount not to exceed \$8,599,715,000 to carry out the purposes of the Bond Act. (Declaration of
7 Geoffrey Palmertree in Support of Plaintiffs’ Opening Trial Brief, filed herewith (hereafter
8 Palmertree Decl.), ¶¶ 2-3, Exs. A-B.) The Committee also adopted a companion resolution,
9 entitled, “High-Speed Passenger Train Finance Committee, Resolution X (2013),” that authorized
10 the issuance of State of California High-Speed Passenger Train Refunding Bonds to refund any
11 bonds or commercial paper notes issued under Resolution IX or bonds issued under Resolution X.
12 (Palmertree Decl., ¶ 4, Ex. C.)

13 ARGUMENT

14 I. THIS VALIDATION ACTION IS PROPER UNDER THE VALIDATION STATUTES AND 15 GOVERNMENT CODE SECTION 17700.

16 Code of Civil Procedure section 860 provides that a public agency may bring an in rem
17 action to determine the validity of any matter which under any other law is authorized to be
18 determined pursuant to the Validation Statutes. Thus, the Validation Statutes look to other
19 provisions of law to determine what matters are proper subjects for validation, and if authorized
20 “under any other law,” a public agency may initiate an action to confirm the validity of the matter
21 at issue. Validation actions are brought most commonly to validate bonds. (*Planning
22 & Conservation League v. Dept. of Water Resources* (1998) 17 Cal.4th 264, 271-272.) Here,
23 Government Code section 17700 authorizes Plaintiffs³ to “bring an action to determine the
24 validity of [their] bonds, warrants, contracts, obligations, or evidences of indebtedness” under the
25 Validation Statutes. Without a judicial determination regarding their validity, Plaintiffs cannot
26 begin to market or sell their bonds. (See *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th

27 _____
28 ³ Section 17700 applies to any “state board, department, agency, or authority. . .”

1 835, 842 [“Assurance as to the legality of the proceedings surrounding the issuance of municipal
2 bonds is essential before underwriters will purchase bonds for resale to the public,” citation
3 omitted].)

4 Jurisdiction in a validation action court is established through publication of the summons
5 in accordance with the Validation Statutes. (Code Civ. Proc., § 861.) Plaintiffs not only met, but
6 exceeded, the notice requirements under the Validation Statutes. (See Proofs of Publication, filed
7 May 13, 2013; Declaration of Mailing of Summons and Complaint, filed May 24, 2013;
8 Declaration of Brenda Apodaca re Mailing of Summons and Complaint, filed May 31, 2013;
9 Declaration of Service – Kern County, filed May 24, 2013.) This action is properly brought
10 under the Validation Statutes and this Court has jurisdiction over the subject matter and all
11 persons.⁴ (Code Civ. Proc., §§ 860, 861, 861.1, 862.)

12 **II. THE BONDS AND RESOLUTIONS ARE VALID.**

13 The Bond Act authorizes the issuance and sale of bonds and other obligations by the State,
14 pursuant to the procedures established in the Bond Act, and in a principal amount of up to nine
15 billion dollars (\$9,000,000,000), for the high-speed rail project. (Sts. & Hy. Code, §§ 2704.04,
16 subds. (b)-(c), 2704.06.) Under the State General Obligation Bond Law (which is commonly
17 incorporated into state general obligation bond acts, including the Bond Act), before bonds are
18 issued, a state board requests the applicable finance committee to cause bonds to be issued for
19 purposes specified in the bond act. (Gov. Code, §§ 16722, 16730.) In this case, the Bond Act
20 designates the Authority as the state board for purposes of the State General Obligation Bond
21 Law. (Sts. & Hy. Code, § 2704.12, subd. (b).) The Authority is therefore authorized to request
22 the Committee to cause bonds to be issued for purposes specified in the Bond Act. (Sts. & Hy.
23 Code, § 2704.12, subd. (b); Gov. Code, §§ 16722, subd (a), 16730.) On March 18, 2013, after
24 public notice, the Authority adopted a resolution requesting the Committee to authorize issuance
25 of bonds, commercial paper notes, and refunding bonds under the Bond Act. (Reed Decl., ¶¶ 2-3,
26 Ex. A-B.)

27 _____
28 ⁴ Venue is also proper in Sacramento County. (Gov. Code, § 17700, subd. (c).)

1 The Committee is the state entity authorized to issue bonds for the high-speed rail project.
2 (Sts. & Hy. Code, § 2704.13.) Specifically, pursuant to the Bond Act and Government Code
3 section 16730, upon request of the Authority, the Committee “shall determine whether or not it is
4 necessary or desirable to issue bonds authorized pursuant to [the Bond Act] . . . and, if so, the
5 amount of bonds to be issued and sold.” (Sts. & Hy. Code, § 2704.13.) On March 18, 2013, the
6 Committee, pursuant to the Bond Act, and after public notice, adopted its Resolution IX, entitled,
7 “High-Speed Passenger Train Finance Committee, Resolution IX (2013),” making the applicable
8 findings and authorizing the issuance of State of California High-Speed Passenger Train Bonds or
9 Commercial Paper Notes in the principal amount not to exceed \$8,599,715,000 to carry out the
10 purposes of the Bond Act. (Palmtree Decl., ¶¶ 2-3, Exs. A-B.) The Committee also adopted a
11 companion resolution, entitled, “High-Speed Passenger Train Finance Committee, Resolution X
12 (2013),” that authorized the issuance of State of California High-Speed Passenger Train
13 Refunding Bonds to refund any bonds or commercial paper notes issued under Resolution IX or
14 bonds issued under Resolution X. (Palmtree Decl., ¶ 4, Ex. C.)

15 The Bond Act specifically authorized the actions taken by the Authority and the
16 Committee; in turn, the Authority’s and the Committee’s actions complied with the Bond Act.
17 Plaintiffs properly adopted their respective resolutions at a publicly-noticed meeting. The
18 resolutions and the bonds do not exceed Plaintiffs’ authority or the amount of bonds that could be
19 authorized under the Bond Act. (See Sts. & Hy. Code, §§ 2704.04, subds. (b)-(c), 2704.06,
20 2704.13.) The Validation Statutes provide that the bonds and notes authorized in Resolution IX
21 and the refunding bonds authorized in Resolution X are in existence for the purpose of validation
22 as of the date they were authorized.⁵ (Code Civ. Proc., § 864.) The bonds were properly
23 authorized under the Bond Act. Thus, this validation action can be brought now, and the bonds
24 and the resolutions should be validated in this proceeding. (See *Friedland v. City of Long Beach*,
25 *supra*, 62 Cal.App.4th at p. 842 [“[I]n its most common and practical application, the validating
26 proceeding is used to secure a judicial determination that proceedings by a local government

27 ⁵ The purpose of the Validation Statutes is to confirm the validity of bonds *before* they
28 are issued, thus “existence” is defined as upon authorization.

1 entity, such as the issuance of municipal bonds and the resolution or ordinance authorizing the
2 bonds, are valid, legal, and binding,” citation omitted].)

3 For the foregoing reasons, the Court should issue a judgment in favor of Plaintiffs.

4 **III. PLAINTIFFS ARE NOT SEEKING TO VALIDATE USE OF PROCEEDS.**

5 The Complaint for Validation specifies that Plaintiffs only seek to validate bonds and not
6 use of proceeds. (See, e.g., Complaint for Validation, ¶ 19(d) [stating any challenges based on
7 use of proceeds will not affect the determination of validity of the bonds]; see also May 29, 2013
8 Ruling on Submitted Matter (Motion to Quash Form of and Publication of Summons), p. 2 [“Any
9 challenge to the use of the proceeds may be raised at a later date”].) Because the high-speed rail
10 project has attracted numerous lawsuits unsuccessfully attempting to interfere with, slow, or stop
11 its construction, this validation action is necessary to ensure that future litigation challenging how
12 bond proceeds are spent does not also allege claims affecting bond validity that could hinder or
13 prevent the State from marketing or issuing bonds in the first place. If there is a possibility that
14 the bonds may be declared invalid, no third party investor will buy the bonds due to the risk they
15 might not be repaid—the State cannot pay an invalid debt. (*Friedland v. City of Long Beach*,
16 *supra*, 62 Cal.App.4th at p. 843 [“The fact that litigation may be pending or forthcoming
17 drastically affects the marketability of public bonds[.] . . . [T]he possibility of future litigation
18 [regarding the underlying validity of bonds] is very likely to have a chilling effect upon potential
19 third party lenders, thus resulting in higher interest rates or even the total denial of credit,’ which
20 may impair a public agency’s ability to fulfill its responsibilities,” quoting *Walters v. County of*
21 *Plumas* (1976) 61 Cal.App.3d 460, 468].) Constructing a high-speed rail system is unlike
22 constructing a building, on which bond proceeds are more commonly spent. A high-speed rail
23 system must be built in segments and thus the nature of the project prevents resolving all use of
24 proceeds disputes before bonds are issued. Challenges to how the bond proceeds are spent have
25 been and may continue to be brought separately, but Plaintiffs are entitled to issue and repay
26 bonds without fear of future litigation challenging the validity of the actual bond issuance. For
27
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1 these reasons, any arguments Defendants raise relating to use of bond proceeds should have no
2 impact on this validation proceeding.⁶

3 **IV. ARGUMENTS RELATING TO THE TERM OF THE BONDS ARE MISPLACED.**

4 Streets and Highways Code section 2704.13 provides that “[t]he committee shall consider
5 program funding needs, revenue projections, financial market conditions, and other necessary
6 factors in determining the term for the bonds to be issued.” Defendants may assert that Plaintiffs
7 need to prove that they considered these factors as a condition precedent to validation of the
8 bonds. However, this argument fails because the bonds are to be sold in different series, in
9 varying amounts, over a period of years, on different dates, and with maturity dates to be
10 determined—it is only at those times that the statutory factors become knowable and can be
11 evaluated in reference to the particular series of bonds to be issued. (Palmertree Decl., Ex. B,
12 art. V, §§ 5.01, 5.02.) This is why Streets and Highways Code section 2704.13 allows the
13 Committee to delegate determination of the bond term to the Treasurer as agent for the sale of the
14 bonds. Here, the Committee has exercised its discretion to delegate to the Treasurer the duty to
15 determine a maturity date (of 35 years or less) for each bond series in accordance with sections
16 2704.11, subdivision (b) and 2704.13. (Palmertree Decl., Ex. B, art. V, §§ 5.02(a)(vii),
17 5.02(b)(vii).)

18 Streets and Highways Code section 2704.13 is a directive to consider certain factors in
19 deciding the duration of the bonds when issued, not how Plaintiffs must authorize them. It
20 provides no basis for challenge to the validity of the bonds. The Committee validly exercised its
21 discretion in setting a maximum term (35 years or less) in compliance with section 2704.11,
22 subdivision (b), and properly exercised its discretion to delegate the determination of the exact
23 duration for each bond series at issuance to the Treasurer, to be determined based on the stated

24 ⁶ The *Tos* defendants opposed mandatory consolidation under Code of Civil Procedure
25 section 865 by arguing (and conceding) that their separate action challenging use of the bond
26 funds does not “address any aspect of the issuance or validity of the bonds addressed by the
27 Validation Action.” (See Plaintiffs’ Opposition To Motion of California High-Speed Rail
28 Authority Et Al To Consolidate for Trial Purposes, filed April 22, 2013 in *Tos, et al. v. California
High-Speed Rail Authority, et al.*, Case No. 34-2011-00113919, p. 3.) Thus, as the *Tos*
defendants previously acknowledged, use of proceeds issues are irrelevant to the validation
action.

1 factors at the time of issue. The Committee has fully complied with the Bond Act by determining
2 a maximum duration and then delegating more specific determinations of bond maturity to the
3 Treasurer. Any argument that determinations regarding term, which are dependent upon pricing
4 and market conditions, should be made long *before* the bonds are sold is without legal or
5 logistical merit and should be rejected.

6 **V. PLAINTIFFS WILL ADDRESS ANY ADDITIONAL ARGUMENTS RAISED BY**
7 **DEFENDANTS ON REPLY.**

8 Although Plaintiffs have attempted to anticipate issues Defendants will raise, Plaintiffs
9 cannot know at this time what legal and/or factual arguments Defendants may make in opposing
10 validation. This circumstance is due to the nature of a validation action, which requires all
11 persons to bring forth all contests of the matter to be validated as answering defendants in the
12 action. Necessarily, Plaintiffs' reply brief will address the issues Defendants raise in opposition,
13 which, as with all contested validation actions, may require submission of additional argument
14 and evidence on reply.

15 **CONCLUSION**

16 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant the relief
17 sought in their Complaint for Validation.

18 Dated: June 28, 2013

Respectfully Submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **HIGH-SPEED RAIL AUTHORITY, et al. v. ALL PERSONS INTERESTED**
No.: **34-2013-00140689**

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.

On June 28, 2013, I served the attached

NOTICE OF TRIAL ON COMPLAINT FOR VALIDATION (Code Civ. Proc., § 594)

HIGH-SPEED RAIL AUTHORITY AND HIGH-SPEED PASSENGER TRAIN FINANCE COMMITTEE'S OPENING TRIAL BRIEF IN SUPPORT OF VALIDATION JUDGMENT

DECLARATION OF GEOFFREY PALMERTREE IN SUPPORT OF HIGH-SPEED RAIL AUTHORITY AND HIGH-SPEED PASSENGER TRAIN FINANCE COMMITTEE'S OPENING TRIAL BRIEF

DECLARATION OF ANGELA REED IN SUPPORT OF HIGH-SPEED RAIL AUTHORITY AND HIGH-SPEED PASSENGER TRAIN FINANCE COMMITTEE'S OPENING TRIAL BRIEF

by placing a true copy thereof enclosed in a sealed envelope with the Golden State Overnight courier service, addressed as follows:

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 June 28, 2013, at Sacramento, California.

Brenda Apodaca
Declarant

Brenda Apodaca
Signature

SERVICE LIST

Case Name: **HIGH-SPEED RAIL AUTHORITY, et al. v. ALL PERSONS INTERESTED**
No.: **34-2013-00140689**

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