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California High-Speed Rail Authority

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

JOHN TOS, QUENTIN KOPP, TOWN OF ATHERTON, a municipal corporation, COUNTY OF KINGS, a subdivision of the State of California, MORRIS BROWN, PATRICIA LOUISE HOGAN-GIORNI, ANTHONY WYNNE, COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation, TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, and CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation,

Plaintiffs,

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY, a public entity, BOARD OF DIRECTORS OF THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY, and DOES 1-20 inclusive,

Defendants.

Case No. 34-2016-00204740

DECLARATION OF SHARON L. O'GRADY IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND EXHIBITS 1 TO 6

Date: April 19, 2017
Time: 11:00 a.m.
Dept: 54
Judge: Raymond M. Cadei
Trial Date: None set
Action Filed: December 13, 2017

I, SHARON L. O'GRADY, declare as follows:

1. I am a Deputy Attorney General, and I represent defendant California High-Speed Rail Authority in this action. I am submitting this declaration in opposition to plaintiffs' Motion for Preliminary Injunction. The facts set forth herein are based on my personal knowledge, and I could competently so testify if called as a witness.

2. Attached hereto as Exhibit 1 is a true and correct copy of Legislative Counsel Bureau Opinion dated June 8, 2012, which was Tab 385 to the Appendix filed in the Third District Court of Appeal in California High-Speed Rail Authority v. Superior Court, No. C075668, in which proceeding the Court of Appeal issued the decision, *California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676 ("*CHSRA*"). Exhibit 3 also was Document 69 of the administrative record in *Tos v. High-Speed Rail Authority*, Sacto. Super. Ct. No. 34-2011-00113919, filed November 14, 2011 ("*Tos I*").

3. Attached hereto as Exhibit 2 is a true and correct copy of the Supplemental Official Voter Information Guide, Tuesday November 4, 2008, which was Tab 319 to the Appendix filed in the Court of Appeal in California High-Speed Rail Authority v. Superior Court, No. C075668. Exhibit 4 also was Document 1 of the administrative record in *Tos I*.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Judgment Denying Petition and Complaint in *Tos I*, filed March 22, 2016.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Ruling on Submitted Matter: Remedies on Petition for Writ of Mandate in *Tos I*, filed Nov. 25, 2013.

6. Attached hereto as Exhibit 5 is a true and correct copy of the petition for review filed in *Kings County, et al., v. Surface Transportation Board*, Ninth Cir. No. 15-71780 (June 11, 2015).

7. Attached hereto as Exhibit 6 is a true and correct copy of the Verified Second Amended Petition for Preemptory Writ of Mandate filed in *Transportation Solutions Defense & Education Fund v. California Air Resources Board*, Sacto. Super. Ct. No. 34-2014-80001974 (Oct. 18 2016).

8. Attached hereto as Exhibit 7 is a true and correct copy of AECOM, *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance* (Fall 2016), which I obtained from the U.S. Treasury Department's website at https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf on April 4, 2017.

9. Attached hereto as Exhibit 8 is a true and correct copy of the Cooperative Agreement, Amendment No. 6, dated May 16, 2016 between the California High-Speed Rail Authority (the Authority) and the U.S. Department of Transportation Federal Railroad Administration (FRA), which I obtained from the Authority's website at http://hsr.ca.gov/docs/about/funding_finance/funding_agreements/HSRFRA_CooperativeGrantAgreement_Amendment6_051816_Redacted.pdf on Tuesday, March 21, 2017.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Cooperative Agreement, Amendment No. 1, dated January 18, 2017 between the Authority and FRA, which I obtained from the Authority's website at http://hsr.ca.gov/docs/about/funding_finance/funding_agreements/Executed_FY10_Amendment_1.pdf on Tuesday, March 21, 2017.

11. Attached hereto as Exhibit 10 is a true and correct copy of the Caltrain press release, *Caltrain Reaches Agreement with Contractors to Extend March 1 Deadline*, dated February 27, 2017, which I obtained from Caltrain's website at http://www.caltrain.com/about/MediaRelations/news/Caltrain_Reaches_Agreement_with_Contractors_to_Extend_March_1_Deadline.html on Tuesday, March 21, 2017.

12. Attached hereto as Exhibit 11 is a true and correct copy of Parsons Brinckerhoff, *California High-Speed Rail and the Central Valley Economy* (Jan. 2015), which I obtained from the Authority's website at https://www.hsr.ca.gov/docs/Newsroom/reports/2015/FINAL_FULL_CENTRAL_VALLEY_ECONOMIC_STUDY_REPORT_020515.pdf on Tuesday, April 4, 2017.

13. Attached hereto as Exhibit 12 is a true and correct copy of Item No. 19, Town of Atherton, City Council Staff Report, dated July 20, 2016, attaching the Town of Atherton' Rail

Related Policy Positions, which I obtained from the Town of Atherton's website at http://www.ci.atherton.ca.us/DocumentCenter/View/3349 on Thursday, March 23, 2017.

14. Attached hereto as Exhibit 13 is a true and correct copy of the California High-Speed Rail Authority's San Francisco to San Jose Peninsula Corridor Funding Plan, dated January 1, 2017, which I obtained from the Authority's website at http://www.hsr.ca.gov/docs/about/funding_finance/SF_to_SJ_Peninsula_Corridor_Funding_Plan.pdf on Wednesday, March 29, 2017.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true. Executed this 6th day of April, 2017, in San Francisco, California.

Sharon L. O'Grady

SA2016104863

EXHIBIT 1

A TRADITION OF TRUSTED LEGAL SERVICE
TO THE CALIFORNIA LEGISLATURE

LEGISLATIVE COUNSEL BUREAU

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June 8, 2012

Honorable Joe Simitian
Room 2080, State Capitol

Honorable Mark DeSaulnier
Room 5035, State Capitol

HIGH-SPEED RAIL - #1211030

Dear Senators Simitian and DeSaulnier:

You have asked whether the revised business plan adopted by the High-Speed Rail Authority on April 12, 2012, for the high-speed rail project complies with Proposition 1A.

Proposition 1A, approved by the voters in November 2008, enacted the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Ch. 20 (commencing with Sec. 2704), Div. 3, S.& H.C.;[1] hereafter the bond act) and authorizes the issuance of $9.95 billion in general obligation bonds for high-speed rail and related purposes. The bond act provides funds to initiate the construction of a high-speed train system (subd. (a), Sec. 2704.04), but acknowledges that additional funds are required to construct the system beyond what is provided in the bond act (Sec. 2704.07). The High-Speed Rail Authority (hereafter the authority) is charged with implementing the high-speed rail system under the bond act (subd. (b), Sec. 2704.01, Sec. 2704.07).

On April 12, 2012, the authority adopted the California High-Speed Rail Program Revised 2012 Business Plan (hereafter revised business plan) pursuant to Section 185033 of

[1] All further section references are to the Streets and Highways Code, unless otherwise specified.

the Public Utilities Code.[2] The revised business plan sets forth the authority's implementation strategy for the high-speed rail system and is a revision of previous business plans, including a draft plan dated November 1, 2011.

In considering the question presented, we will review the key elements of the revised business plan in the context of the requirements of the bond act. We will also review for consistency with the bond act the initial segment proposed for construction in the revised business plan and the associated proposed appropriations for the 2012-13 fiscal year, as well as the proposed future expenditures of bond act funds under several memoranda of understanding (hereafter MOUs) between the authority and regional agencies that are referenced in the revised business plan.[3]

I. The Bond Act

The bond act authorizes the issuance of a total of $9.95 billion in general obligation bonds, of which $9 billion is for high-speed rail purposes (Sec. 2704.06; hereafter Proposition 1A HSR funds). The remaining $950 million is to be allocated, by formula, to existing operators of conventional passenger rail services (commuter and intercity rail and rail transit) in order to provide or improve connectivity of those services to the high-speed rail system (hereafter HSR system), or for other capital improvements to those conventional services, including capacity enhancements and safety improvements (para. (1), subd. (a), and subd. (d), Sec. 2704.095; hereafter Proposition 1A connectivity funds). Both categories of Proposition 1A bond funds are required to be appropriated by the Legislature before they may be allocated (Secs. 2706 and 2709.095).

II. Summary of the Revised Business Plan

Under the revised business plan of the authority, implementation of the HSR system is proposed to occur on a phased basis, with construction of various segments as funding permits. As outlined in the revised business plan, the initial 130 miles of construction with currently available funds is to begin between the vicinity of Madera and Bakersfield in the central valley, which segment would be used by conventional passenger

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[2] Preparation of a business plan is not a requirement of the bond act, but rather is required by the authority's enabling legislation (Div. 19.5 (commencing with Sec. 185000), P.U.C.).

[3] An analysis of the legal issues associated with the high-speed rail project is heavily dependent on facts. In that regard, we have relied upon the revised business plan and other publicly available documents. In some cases, we have asked the authority to further explain certain matters, and indicate in the opinion where we have done so and the information we are relying upon in our analysis. We do not have the ability to independently confirm the accuracy of this information. Accordingly, to the extent the underlying facts and assumptions relating to the project change, the associated legal analysis also could be subject to change.

train services on an interim basis upon completion (Step 1, revised business plan, pp. 2-10 and 2-11; hereafter initial 130-mile segment). As additional high-speed rail segments are completed, high-speed train service would be implemented first between Merced, Palmdale, and the San Fernando Valley area of Los Angeles on the initial operating section (hereafter IOS), with connections to other locations offered on conventional passenger train services (Step 2, revised business plan, p. 2-11). At a later date, the revised business plan proposes to offer high-speed train service from San Francisco Transbay Terminal to the San Fernando Valley using a combination of new high-speed rail alignments and the upgraded and extended Caltrain corridor between San Francisco and San Jose, on which a "blended" rail system would be implemented serving both electrified conventional Caltrain commuter trains and high-speed trains on the same tracks (Step 3, revised business plan, pp. 2-11 and 2-12). Subsequent construction would extend high-speed train service from the San Fernando Valley to Los Angeles Union Station and to Anaheim (Step 4, revised business plan, p. 2-12).[4]

The revised business plan also refers to three MOUs between the authority and regional agencies in the Bay Area, southern California, and the central valley (hereafter, respectively, the Bay Area MOU, the southern California MOU, and the central valley MOU), which are designed to identify and implement other early investments of bond act funds in these regions (revised business plan, pp. 2-7 to 2-9).

In connection with the adoption of the revised business plan, the Department of Finance submitted an April finance letter requesting, among other things, the appropriation of $3.241 billion in federal funds and $2.609 billion in Proposition 1A HSR funds for construction of the initial 130-mile segment in the central valley, plus $812 million in Proposition 1A connectivity funds for projects throughout the state.

[4] The draft revised business plan originally proposed to serve Los Angeles-Anaheim via connecting conventional trains, but the authority board, as we understand it, approved an amendment to the revised business plan, prior to adoption on April 12, 2012, to include high-speed train service to Anaheim, likely via a blended system concept, with details to be determined (see "HSRA commits to one-seat ride for Anaheim" http://www.cahighspeedrail.ca.gov/ pr_04122012_Anaheim.aspx [as of May 8, 2012]). Future steps under the revised business plan could include additional enhancements to the system plus additional phases, including Sacramento-Merced and Los Angeles-Riverside-San Diego (Steps 4 and 5, revised business plan, p. 2-12).

III. Analysis of the Revised Business Plan

A. Construction Priority for the Phase 1 Corridor

Under the bond act, Phase 1 of the high-speed rail project is identified as the "corridor of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim" (para. (2), subd. (b), Sec. 2704.04). Use of bond proceeds for capital costs in corridors other than the Phase 1 corridor is authorized only if the authority makes a finding, among other things, that expenditure of bond proceeds in those other corridors would advance the construction of the system and would not have an adverse impact on the construction of the Phase 1 corridor (para. (3), subd. (b), Sec. 2704.04). Therefore, the bond act requires priority to be given to construction of the Phase 1 corridor.

Both the initial 130-mile segment to be constructed in the central valley, as well as the IOS between Merced and Palmdale/San Fernando Valley, are within the Phase 1 corridor. The route from San Francisco to San Jose, the subject of the Bay Area MOU and a candidate for blended operation, is also within the Phase 1 corridor. However, we are unable to determine whether the projects that are the subject of the southern California MOU would be solely within the Phase 1 corridor because those projects, as discussed further below, have yet to be defined. With that exception, it is our opinion that the revised business plan is consistent with the requirement in the bond act to give priority to construction of the Phase 1 corridor.

The definition of the Phase 1 corridor also includes three specific stations, San Francisco Transbay Terminal, Los Angeles Union Station, and Anaheim (para. (2), subd. (b), Sec. 2704.04). The revised business plan proposes to serve all three of these stations with high-speed trains when phases of the project are completed to those locations.

San Francisco Transbay Terminal is not currently served by any trains. However, construction by a local agency is currently underway with federal funds, including federal high-speed rail funds, and local funds to provide a below-grade rail station for an anticipated future 1.3-mile rail extension to be used by Caltrain commuter trains and high-speed trains.[5] The revised business plan, according to the authority, includes funding for that extension in the high-speed rail cost estimates. Los Angeles Union Station would be served by high-speed trains upon completion of the phase of the project that extends the new high-speed rail line from the San Fernando Valley to that station. Anaheim was initially excluded from high-speed train service in the draft revised business plan that went to the board of the authority, but was added back to the plan by the board.[6] Anaheim would most likely be served under a

[5] The Transbay Terminal, referenced in the bond act, is now frequently referred to as the Transbay Center (see http://transbaycenter.org/project/program-overview [as of May 23, 2012]).

[6] See footnote 4.

blended corridor shared with conventional trains, or possibly by a new high-speed alignment, in a manner that is yet to be determined (revised business plan, pp. 2-12 and 3-12). Based on the information available to us, it is our opinion that the revised business plan conforms to the bond act relative to including these three stations in Phase 1 of the project.

B. Design Characteristics

The bond act contains certain design characteristics for the HSR system. These are included in Section 2704.09, which reads as follows:

> "2704.09. The high-speed train system to be constructed pursuant to this chapter shall be designed to achieve the following characteristics:
>
> "(a) Electric trains that are capable of sustained maximum revenue operating speeds of no less than 200 miles per hour.
>
> "(b) Maximum nonstop service travel times for each corridor that shall not exceed the following:
>
> "(1) San Francisco-Los Angeles Union Station: two hours, 40 minutes.
>
> "(2) Oakland-Los Angeles Union Station: two hours, 40 minutes.
>
> "(3) San Francisco-San Jose: 30 minutes.
>
> "(4) San Jose-Los Angeles: two hours, 10 minutes.
>
> "(5) San Diego-Los Angeles: one hour, 20 minutes.
>
> "(6) Inland Empire-Los Angeles: 30 minutes.
>
> "(7) Sacramento-Los Angeles: two hours, 20 minutes.
>
> "(c) Achievable operating headway (time between successive trains) shall be five minutes or less.
>
> "(d) The total number of stations to be served by high-speed trains for all of the corridors described in subdivision (b) of Section 2704.04 shall not exceed 24. There shall be no station between the Gilroy station and the Merced station.
>
> "(e) Trains shall have the capability to transition intermediate stations, or to bypass those stations, at mainline operating speed.
>
> "(f) For each corridor described in subdivision (b), passengers shall have the capability of traveling from any station on that corridor to any other station on that corridor without being required to change trains.
>
> "(g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent feasible and shall be financially viable, as determined by the authority.
>
> "(h) Stations shall be located in areas with good access to local mass transit or other modes of transportation.
>
> "(i) The high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and impacts on the natural environment.

"(j) Preserving wildlife corridors and mitigating impacts to wildlife movement, where feasible as determined by the authority, in order to limit the extent to which the system may present an additional barrier to wildlife's natural movement."

Therefore, the HSR system to be constructed pursuant to the bond act is to be designed to achieve these characteristics.

In considering whether the HSR system envisioned by the revised business plan would comply with these design characteristics, we focus our analysis on elements of the plan that propose to implement a blended system on certain segments, accommodating both high-speed trains and conventional trains. We are not aware of any facts that would prevent compliance with the design characteristics with respect to the new high-speed rail alignments proposed for construction. A blended system, however, presents additional challenges because of the need to accommodate both high-speed trains and conventional trains on existing, albeit upgraded, rail corridors. This results in potential impacts on the capacity of the corridors to, among other things, efficiently handle both types of train services and on the ability to meet required travel times.

With that in mind, we will review the requirements to achieve certain maximum nonstop service travel times, an operating headway (time between successive trains) of five minutes or less, and transitioning or bypass of intermediate stations at mainline operating speed, (subds. (b), (c), and (e), Sec. 2704.09).[7]

1. Maximum Travel Times

Under the bond act, the HSR system is required to be designed to achieve certain maximum nonstop service travel times for specified corridor segments, including two hours, 40 minutes for San Francisco-Los Angeles, 30 minutes for San Francisco-San Jose, and two hours, 10 minutes for San Jose-Los Angeles (paras. (1), (3), and (4), subd. (b), Sec. 2704.09).[8] This design characteristic describes the capabilities of the fastest service that could be offered,

[7] We do not discuss the other design characteristics in Section 2704.09, either because we are not aware of any facts that would prevent compliance by the HSR system with those characteristics (subds. (a), (d), and (f), Sec. 2704.09, regarding use of electric trains capable of sustained maximum revenue operating speeds of no less than 200 miles per hour, limits to the number of stations, and ability of passengers traveling on each of several specified corridors to travel to any other station on the same corridor without being required to change trains), or because the characteristics are stated broadly and provide little basis for assessing compliance (subds. (g), (h), (i), and (j), Sec. 2704.09, regarding using existing transportation corridors, station mass transit access, minimizing urban sprawl and environmental impacts, and preserving wildlife corridors). We also do not discuss future phases of the project beyond Phase 1 because the revised business plan is primarily concerned with implementing Phase 1.

[8] We limit our analysis to the segments that are in Phase 1 of the project.

namely the level of service offered if trains ran nonstop. Train service with intermediate stops would take longer.

With respect to the San Jose-Los Angeles segment, which, when completed, would operate entirely on a new high-speed rail alignment, we are not aware of any facts indicating that the required 2 hour, 10 minute nonstop travel time is not achievable. With respect to the San Francisco-San Jose segment, which under the revised business plan is proposed to be constructed as a blended system rather than on a new high-speed rail alignment, and by extension, the overall San Francisco-Los Angeles segment, which would incorporate the blended segment, compliance with the bond act is not clear. We reviewed with the authority the results of the LTK study for the Caltrain Joint Powers Board entitled "Caltrain/California HSR Blended Operations Analysis" (March 2012) (hereafter LTK Study) which identified somewhat longer high-speed train running times for several operating scenarios between San Francisco and San Jose, namely 46, 43, and 37 minutes (LTK Study, pp. 46-50). In addition, these running times were based on the current Caltrain station, located at 4th and King Streets, being the San Francisco terminus, rather than the more remote Transbay Terminal (LTK Study, p. 15).

The authority advised us that the revised business plan assumes a design that can meet the required travel times for the San Francisco-San Jose segment, and by extension, the San Francisco-Los Angeles segment, even with blended operation and the service extension to the Transbay Terminal. The LTK study, per the authority, was conducted to determine the conceptual feasibility of a blended system rather than to explore the universe of operational options. We are not able to independently verify the authority's assertion that the required travel times can be met under the blended system.

2. Operating Headways

Under the bond act, the HSR system is also required to be designed to achieve an operating headway (time between successive trains) of five minutes or less (subd. (c), Sec. 2704.09).

As with the previous analysis of the maximum nonstop service travel times, we are not aware of any facts indicating that the San Jose-Los Angeles segment, on a new high-speed rail alignment, would be unable to achieve the required operating headway (12 trains per hour per direction), and focus our attention on the proposed blended segments of the HSR system.

With respect to the San Francisco-San Jose segment, the LTK Study identifies three operating scenarios, none of which exceeds six commuter trains and four high-speed trains per hour, per direction, suggesting that the capacity of a blended system on the required segment may fall short of achieving the required operating headway. We were advised that the authority expects to meet the design characteristic of 12 trains per hour under the design proposed by the revised business plan, with the design being agnostic with regard to the mix of trains (commuter vs. high-speed) that will ultimately be accommodated between San Francisco and San Jose.

It could be argued that this design characteristic in the bond act speaks only to the operating headway for high-speed trains, rather than all trains, given that the design characteristics in Section 2704.09 relate to "the high-speed train system to be constructed pursuant to this chapter." If so, this design characteristic is likely to be met, if at all, only on a theoretical level, rather than on an operational level, to the extent the revised business plan relies on a blended operations concept. On the other hand, the bond act also contemplates the potential use of newly constructed alignments by passenger train services other than the high-speed train service as long as there will not be any unreimbursed operating or maintenance cost to the authority (para. (3), subd. (f), Sec. 2704.08). To the extent those other passenger train services would be accommodated on a newly constructed line, they would consume a portion of the line's carrying capacity and potentially limit the number of high-speed trains that can be operated. Because the bond act appears to contemplate shared operations, suggesting that the operating headway requirement is not intended to be met with high-speed trains alone, it appears reasonable to interpret this design characteristic in a manner that requires 12 trains per hour to be accommodated, regardless of the type of train.

Because decisions on the number and mix of trains that will actually operate on any of the lines, new construction as well as blended, have yet to be made, we lack the facts necessary to determine if this 12-train standard can be met with respect to the San Francisco-San Jose and San Francisco-Los Angeles segments.

This design characteristic would also apply to the Los Angeles-Anaheim segment, but we have no information to evaluate whether that segment could meet this design characteristic, as the blended concept has not been fully developed for that segment by the authority and affected regional agencies.

3. Transitioning or Bypass of Intermediate Stations

Under the bond act, the HSR system is required to be designed for trains to have the capability to transition intermediate stations, or to bypass those stations, at mainline operating speed (subd. (e), Sec. 2704.09). As with the other design characteristics, we are not aware of any facts indicating that the San Jose-Los Angeles segment, on a new high-speed rail alignment, will be unable to meet this requirement.

The authority advised us that compliance with this requirement on a blended system is a function of an appropriately designed configuration of passing tracks, and that the revised business plan assumes a design that can meet this requirement for the San Francisco-San Jose segment. As with the design characteristics relating to the maximum travel times and operating headways, we are not able to verify the authority's assertions in this regard. Similarly, we have no information to evaluate whether the Los Angeles-Anaheim segment could meet this characteristic, as the blended concept has not been fully developed for that segment by the authority and affected regional agencies.

4. The Full-Build Option

Finally, if the blended system proposed by the revised business plan would not meet every design characteristic of the HSR system required by the bond act, it may nonetheless be possible for the revised business plan to be in compliance with the bond act if the revised business plan continues to include a "full-build" option for the blended segments, wherein the blended system components to be constructed with Proposition 1A HSR funds would be merely an interim step toward completion of a full HSR system. On the other hand, if the full-build option for the blended segments is not a part of the revised business plan, we think the blended system itself, as the ultimate system in those segments, would need to meet the design characteristics or risk being vulnerable to challenge.

In that regard, our review of the revised business plan suggests that the full-build option is retained by the plan as a future option. On page 2-12, the revised business plan states: "Under a Full Build scenario, dedicated high-speed rail infrastructure would be extended from San Jose to San Francisco's Transbay Transit Center and from Los Angeles to Anaheim." On page 3-12, the revised business plan states: "If a decision is made in the future to construct the Phase 1 Full Build system, this would involve constructing fully dedicated high-speed rail infrastructure between San Jose and San Francisco and between Los Angeles and Anaheim." We are unable to determine, however, whether the infrastructure to be constructed with Proposition 1A HSR funds to implement the blended system could reasonably be considered an initial step of a full-build scenario, or whether the full-build scenario would necessarily require completely separate infrastructure for the affected segments. We think that in order for Proposition 1A HSR funds to be used on blended system infrastructure as part of a plan that includes a full-build scenario, the blended system infrastructure would, as a rule, need to be a part of the infrastructure needed for the full-build system.

In short, with respect to the three design characteristics discussed above, namely maximum travel times, operating headways, and transitioning or bypass of intermediate stations, we lack the facts necessary to independently assess whether those design characteristics can be achieved for the blended segments of the HSR system proposed in the revised business plan. While we have been informed by the authority that those design characteristics can be met under a blended system, questions may be raised as to whether the revised business plan is consistent with the requirements of the bond act in that regard.

With respect to the full-build option contained in the revised business plan, we think that such an option is likely to meet the design characteristics contained in the bond act. However, if a full-build option is chosen and a blended system cannot meet the design requirements of the bond act, we think that Proposition 1A HSR funds may be used on the blended system infrastructure only if that infrastructure forms part of the full-build system. We are unable to determine from the revised business plan whether the blended system infrastructure to be constructed with Proposition 1A HSR funds would satisfy this condition.

IV. Proposed Fiscal Year 2012-13 Appropriations

We next review, for consistency with the bond act, the proposal in the revised business plan and in the April finance letter for appropriations of Proposition 1A bond funds and federal funds to start construction of the HSR system with the initial 130-mile segment in the central valley.

As discussed earlier, the bond act authorizes the issuance of $9 billion[9] in general obligation bonds to initiate construction of a HSR system (subd. (a), Sec. 2704.04), but acknowledges that additional funds are required beyond that amount to construct the system (Sec. 2704.07). The bond act does not require all funds to complete the system to be available before construction may begin, but provides for the proceeds of the bond act to be appropriated by the Legislature (Sec. 2704.06) for either a corridor or a usable segment of the HSR system (Sec. 2704.08). "Corridor" is defined as a portion of the HSR system as described in Section 2704.04 (subd. (f), Sec. 2704.01). That section describes various "corridors," including the Phase 1 corridor between San Francisco Transbay Terminal, Los Angeles Union Station, and Anaheim. "Usable segment" is defined to mean "a portion of a corridor that includes at least two stations" (subd. (g), Sec. 2704.01).

As preconditions for the appropriation and expenditure of bond funds, the bond act establishes two reporting requirements. The first requires the authority, prior to submitting an initial request for an appropriation of such funds to the Legislature and the Governor, to submit a detailed funding plan, with specified elements for either a corridor or usable segment, to the Director of Finance, designated legislative committees, and the peer review group[10] (subd. (c), Sec. 2704.08; hereafter the first funding plan). The second requires the authority, prior to committing appropriated bond funds for expenditure, to submit a second detailed funding plan for a corridor or usable segment (subd. (d), Sec. 2704.08; hereafter the second funding plan). The first funding plan requires no action or response by the Legislature or Governor or any recipient of that plan. However, the second funding plan requires review by the Director of Finance and his or her finding that the plan is likely to be successfully implemented as proposed before the authority may enter into commitments to expend the bond funds (Ibid.). The second funding plan also requires inclusion of a report prepared by one or more financial services firms or other similar entities (para. (2), subd. (d), Sec. 2704.08). Further, the second funding plan is required to describe any material changes from the first funding plan. This suggests that such changes are permissible (subpara. (E), para. (1), subd. (d), Sec. 2704.08).

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[9] The bond act generally requires matching funds on a dollar-for-dollar basis from other available funds (subd. (a), Sec. 2704.08).

[10] The authority is required to establish an independent peer review group to review "the planning, engineering, financing, and other elements of the authority's plans," and to analyze, among other things, the funding plan for each corridor (subd. (a), Sec. 185035, P.U.C.).

In the revised business plan and in the first funding plan,[11] the authority has identified an appropriation from Proposition 1A HSR funds and federal high-speed rail funds to begin construction of the HSR system in California. As discussed earlier, the authority proposes to construct the initial 130-mile segment of high-speed rail line in the central valley, with available state and federal funding.[12] In addition, the revised business plan describes the Merced-Palmdale-San Fernando Valley segment as the IOS, which would, when completed, be used to operate the authority's first commercial high-speed train service. The IOS would incorporate the initial 130-mile segment now proposed for construction. Unlike the initial 130-mile segment, the authority does not have firm funding identified to complete the IOS, other than the portion of the $9 billion in Proposition 1A HSR funds that would remain available after funding of the initial 130-mile segment.

The authority projects in the revised business plan that high-speed train service will be able to viably operate on the IOS.[13] However, the initial 130-mile segment by itself is not proposed to be used for high-speed train service until the later completion of the IOS. As we understand it, the initial 130-mile segment, under the revised business plan, will accommodate conventional passenger train service such as the state-funded Amtrak San Joaquin service, which is diesel-operated and, unlike high-speed rail, does not require electrification. Therefore, the authority is proposing to construct the initial 130-mile segment without electrification and the advanced signaling system necessary for operation of high-speed trains, until such time as the initial 130-mile segment is incorporated into the IOS. The track and structures would otherwise be constructed to HSR system standards.

As discussed above, the bond act requires the authority to identify a corridor or usable segment in which the business plan proposes to invest bond proceeds (subd. (c), Sec. 2704.8). Under the revised business plan, neither the initial 130-mile segment nor the

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[11] The funding plan is related to the business plan in that the funding plan incorporates the business plan by reference. Both a draft business plan and a funding plan were submitted to the Legislature on November 3, 2011. The business plan was subsequently revised in the form of the revised business plan adopted by the authority on April 12, 2012. It is our understanding that the authority does not plan to further revise the funding plan.

[12] According to the April finance letter submitted to the Legislature by the Department of Finance, the administration is seeking appropriations of $3.241 billion in federal high-speed rail funds and $2.609 billion in Proposition 1A HSR funds for the 2012-13 fiscal year for the initial 130-mile segment.

[13] The revised business plan identifies Merced-San Fernando Valley as the full build out of the IOS, but suggests that the shorter, included segment of Merced-Palmdale may receive consideration for high-speed passenger train service as an interim step. The plan identifies the portion of the IOS from Bakersfield to Palmdale as a high priority for construction after the initial 130-mile segment because it would close a gap in the state's existing passenger rail network (Step 2, revised business plan, p. 2-11).

IOS is specifically described as a "usable segment." Because the administration is seeking construction funding only for the initial 130-mile segment, we now examine whether it would qualify under the requirements of the bond act as a "usable segment."

It could be argued that "usable segment" means that the segment is to be used by high-speed trains immediately upon its completion. However, the word "usable" is not specifically defined. We think that, by itself, a short segment with only two stations, the minimum number that qualifies under the definition, is unlikely to be usable by an operating, commercially viable high-speed train service. For example, the IOS between Merced and Palmdale/San Fernando Valley under the revised business plan would include five or six stations.

Moreover, while it is clear that eventually the HSR system is to be used by electrified high-speed trains (subd. (a), Sec. 2704.09), there are several provisions of the bond act that contemplate use of newly constructed high-speed rail line segments for passenger train service, as distinguished from high-speed train service, (see para. (3), subd. (f), Sec. 2704.08, referring to "the utility of those corridors or usable segments thereof for passenger train services other than the high-speed train service"; see subpara. (I), para. (2), subd. (c), Sec. 2704.08, referring to "one or more passenger service providers ... using the tracks or stations for passenger train service"; and see subpara. (C), para. (2), subd. (d), Sec. 2704.08, referring to "one or more passenger train providers ... using the tracks or stations for passenger train service"). Thus, with respect to the service that may be expected to operate on a line that is constructed with Proposition 1A HSR funds, the bond act makes a distinction between "high-speed train operation" and "passenger train service," where the latter term, in our view, can apply to conventional passenger train service such as that operated by Amtrak. Therefore, we do not think "usable" in the context of "usable segment" necessarily means "usable by high-speed trains." Rather, it appears sufficient for the initial usable segment to be usable by a passenger train service, such as the state-funded conventional San Joaquin passenger train service operated by Amtrak. Based on the foregoing, we think that operation of a conventional passenger train service on the track and structures constructed for high-speed rail is contemplated and authorized by the bond act as an interim measure until further progress is made on construction of the HSR system that will allow operation of a commercially viable high-speed train service.

It is our understanding that the initial 130-mile segment, as proposed to be constructed by the authority, would include two stations, Fresno and Kings/Tulare, and that it would be designed to be used on an interim basis by the Amtrak San Joaquin conventional passenger train service until additional segments of the HSR system are constructed and the operation of a commercially viable high-speed train service can be implemented.

Accordingly, it is our opinion that the initial 130-mile segment would qualify as a "usable segment" under the bond act.

We now examine whether the requirements of the bond act have been met relative to the appropriation and expenditure of bond act funds for construction of the initial 130-mile segment.

As a preliminary matter, the requirement in subdivision (c) of Section 2704.08 to approve and submit the first funding plan is imposed solely on the authority. It does not impose a limitation on the Legislature's ability to appropriate funds. The Legislature's plenary power includes the general power and responsibility to appropriate funds for the support of state government and to provide for the control, allocation, and expenditure of the funds (Sec. 12, Art. IV, and Sec. 7, Art. XVI, Cal. Const.; *Meyer v. Riley* (1934) 2 Cal.2d 39, 43). Under the separation of powers doctrine, which is derived from the California Constitution, the powers of the government are divided into three branches. Persons charged with the exercise of one power may not exercise either of the others except as permitted by the Constitution (Sec. 3, Art. III, Cal. Const.). The power of appropriation also includes the power to withhold appropriations (*Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 300). Under the separation of powers doctrine, the legislative power may not be delegated to the courts, nor may the courts interfere with the legislative process. (*Schaezlein v. Cabaniss* (1902) 135 Cal. 466, 467; see, for example, *Santa Clara County v. Superior Court in and for Santa Clara County* (1949) 33 Cal.2d 552, 559). Accordingly, under these principles, a court may not enjoin the Legislature from appropriating funds and, therefore, regardless of whether the authority submits a funding plan or an associated request for bond act appropriations, we think that the Legislature is free to appropriate or not appropriate bond act funds, consistent with the purposes of the bond act, as it determines best serves the needs of the state.[14]

Subdivision (c) of Section 2704.08 specifies 11 items that are to be included, identified, or certified to in the first funding plan (subparas. (A) to (K), incl., para. (2), subd. (c), Sec. 2704.08).[15] Those items are as follows:

"2704.08. . . .

* * *

"(c) . . .

"(2) The plan shall include, identify, or certify to all of the following:

"(A) The corridor, or usable segment thereof, in which the authority is proposing to invest bond proceeds.

"(B) A description of the expected terms and conditions associated with any lease agreement or franchise agreement proposed to be entered into by the authority and any other party for the construction or operation of passenger train service along the corridor or usable segment thereof.

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[14] In addition, subdivision (i) of Section 2704.08 provides that no failure to comply with any of the provisions in Section 2704.08 shall affect the validity of the bonds issued under the bond act.

[15] All further subparagraph references are to those of paragraph (2) of subdivision (c) of Section 2704.08.

"(C) The estimated full cost of constructing the corridor or usable segment thereof, including an estimate of cost escalation during construction and appropriate reserves for contingencies.

"(D) The sources of all funds to be invested in the corridor, or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means.

"(E) The projected ridership and operating revenue estimate based on projected high-speed passenger train operations on the corridor or usable segment.

"(F) All known or foreseeable risks associated with the construction and operation of high-speed passenger train service along the corridor or usable segment thereof and the process and actions the authority will undertake to manage those risks.

"(G) Construction of the corridor or usable segment thereof can be completed as proposed in the plan.

"(H) The corridor or usable segment thereof would be suitable and ready for high-speed train operation.

"(I) One or more passenger service providers can begin using the tracks or stations for passenger train service.

"(J) The planned passenger service by the authority in the corridor or usable segment thereof will not require a local, state, or federal operating subsidy.

"(K) The authority has completed all necessary project level environmental clearances necessary to proceed to construction.

***"

With respect to whether the authority's revised business plan and funding plan meet these requirements, we think the authority would not need to provide particular information pursuant to subparagraphs (B) and (E) because it is not proposing, at this time, to enter into lease or franchise agreements with other parties or to operate high-speed train service on the initial 130-mile segment. For subparagraphs (A), (C), (D), (F), and (G), we think the November 3, 2011, funding plan covering the initial 130-mile segment, as well as the IOS identified in that funding plan, contains the reporting and certification elements required by the bond act for inclusion in the first funding plan, and would be sufficient even if limited just to the initial 130-mile segment itself.[16] We also think subparagraph (I) would be

[16] In the reporting and certification elements of the funding plan, the authority purports to have met all requirements relative to the construction it proposes to undertake. We are unable to assess whether all requirements have, in fact, been met, in part because certain (continued...)

satisfied because the initial 130-mile segment is to be designed to accommodate the conventional Amtrak San Joaquin service as an interim use of the new alignment, and that subparagraph (J) would be satisfied because the interim service would not be a service sponsored by the authority as other entities would be responsible for funding its operation.

We now turn to the remaining subparagraphs (H) and (K). With respect to subparagraph (H), the question is whether the new alignment constructed for the initial 130-mile segment meets the requirement of being "suitable and ready for high-speed train operation." This relates to whether it is sufficient, at this point in the life of the project, for the track and structures to be constructed to high-speed rail standards, with electrification and other elements to be deferred to a later date when they will be needed for operation of high-speed train service.

Ultimately, a court, in determining the answer to a question of this nature, would likely look to the bond act as a whole, rather than focusing on a single provision (*Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 645). Statutes must be given a reasonable interpretation and construed with reference to the object sought to be accomplished, so as to promote rather than defeat the general purpose or policy of the statute (*Freedland v. Greco* (1955) 45 Cal.2d 462, 467-468). Thus, where a statute is susceptible of two constructions, the one that will lead to the more reasonable result will be followed (*Metropolitan Water Dist. of Southern Cal. v. Adams* (1948) 32 Cal.2d 620, 630-631).

A high-speed train service requires both the advanced track and structures (essentially full grade separation and minimum curvature) as well as electrification and other elements if it is to meet the 200 miles per hour speed identified in the bond act (subd. (a), Sec. 2704.09). The initial 130-mile segment, as proposed, will be "suitable and ready" for high-speed train service as regards the track and structures, but will lack those other elements. Because, in our view, the bond act authorizes interim use of a facility constructed with bond act funds by a conventional diesel-operated passenger train service, imposing a requirement to construct the usable segment with features that may not be needed for a number of years, such as electrification, could be determined to be an unreasonable result. Moreover, because it could be many years before these features could be put to use, including them immediately could lead to degradation of the electric catenary lines and related facilities and result in a waste of government funds. Therefore, we do not think that the "suitable and ready" provisions require these features to be included in the proposed construction of the initial 130-mile segment.[17]

(...continued)

provisions do not involve objective facts. For example, we have no ability to assess whether the cost estimates to construct a new high-speed rail alignment are accurate, or whether risks of the project have been appropriately identified and mitigated.

[17] Alternatively, the authority could potentially revise its funding plans to incorporate the other elements necessary for operation of the new alignment, but defer awarding contracts to complete that work until those elements are actually needed. Nothing in the bond act requires

(continued...)

Finally, subparagraph (K) requires the authority to certify that it has completed all necessary project-level environmental clearances necessary to proceed to construction of the usable segment. It is our understanding that these clearances have not yet been fully obtained for the initial 130-mile segment. Until that occurs, the authority would be unable to make the required certification under subparagraph (K), and thus the first funding plan would not meet the requirements of the bond act for the authority to request an initial appropriation for construction funds.[18]

With respect to the second funding plan, we think the authority may only commit appropriated bond proceeds for capital purposes if the requisite finding by the Director of Finance has been made. However, we are not in a position to determine the adequacy of such a second funding plan because it has not yet been submitted by the authority, and is not required to be submitted until the authority wishes to proceed to committing those appropriated funds. In addition, we cannot assume that the second funding plan will be in all respects similar to the first funding plan, because the authority is allowed to make material changes, as discussed above, as long as the changes are disclosed.

V. Analysis of the MOUs

The MOUs are referenced in the revised business plan (revised business plan pp. 2-7 to 2-9). As they propose future expenditures of bond act funds, we now review the proposed uses of bond act funds under the MOUs for consistency with the requirements of the bond act.

A. Proposition 1A High-Speed Rail Funds

The MOUs, as we understand them, propose expenditure of $1.1 billion of Proposition 1A HSR funds ($600 million under the Bay Area MOU; $500 million under the southern California MOU).[19]

1. Bay Area MOU

The Bay Area MOU proposes to use $600 million in Proposition 1A HSR funds (and $106 million in Proposition 1A connectivity funds) to electrify, and provide an upgraded

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(...continued)
that a corridor or usable segment be completed prior to commencing construction on a separate corridor or usable segment.

[18] On May 3, 2012, the authority certified the project-level environmental impact report for the Merced-Fresno portion of the high-speed rail project, which corresponds to a portion of the initial 130-mile segment.

[19] For the Bay Area MOU, see http://www.mtc.ca.gov/news/current_topics/3-12/HSR_MOU.pdf [as of May 29, 2012]. For the southern California MOU, see http://www.cahighspeedrail.ca.gov/assets/0/152/232/365/39293e88-8cb2-45e6-be99-025b1c5eba4d.pdf [as of May 29, 2012].

signaling system for, the Caltrain route between San Francisco and San Jose, to be matched on at least a dollar-for-dollar basis with other funds, as part of the required investment needed to implement the blended system proposed by the revised business plan. The Bay Area MOU, as we understand it, does not include the 1.3-mile future extension from the existing San Francisco Caltrain station to the Transbay Terminal, and also does not include the additional passing tracks identified by the revised business plan to accommodate high-speed trains. Until future segments of the HSR system are constructed, the improvements proposed under the Bay Area MOU would be used, upon completion, by the Caltrain conventional train service.

Based on our analysis of the initial 130-mile segment in the central valley, as discussed earlier, we think expenditures of Proposition 1A HSR funds pursuant to the Bay Area MOU would need to be associated, at a minimum, with a usable segment pursuant to the requirements of the bond act.[20] The improvements proposed under the Bay Area MOU, when completed, would not be required under the bond act to be immediately used for high-speed train service but could, in the interim, be used by a conventional passenger train service. Under the blended system, both conventional and high-speed train services would use the improvements in the future after high-speed train service is implemented, and the use of the improvements would not be temporary. Electrification and advanced signals would be implemented immediately, to be used by electrified operation of the Caltrain conventional commuter train service, while additional passing tracks would be deferred until needed for high-speed train operations.

In our view, the segment in question under the Bay Area MOU would meet the requirements under the bond act for a usable segment, as the improvements would be undertaken on a segment that, according to the revised business plan, will have at least two stations, Millbrae and San Jose (subd. (g), Sec. 2704.01), and upon completion, the improvements will be used by a passenger train service. The nature of the improvements, namely electrification of the line and an advanced signaling system, are both required for high-speed train operation.

However, the Caltrain electrification proposal also includes another element, acquisition of new commuter rail rolling stock (electric multiple units, or EMUs). Because this rolling stock is not needed for high-speed rail, we think it would be inappropriate to use Proposition 1A HSR funds for that purpose. The authority advised us that it considers Caltrain EMU rolling stock to be ineligible for Proposition 1A HSR funds, and that this part of the Bay Area MOU would need to be funded from other resources, including Proposition 1A connectivity funds.

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[20] The proposed expenditures of Proposition 1A HSR funds would also be subject to the requirements for funding plans (subds. (c) and (d), Sec. 2704.08). However, neither the revised business plan nor the April finance letter proposes appropriations for these purposes at this time.

Thus, to the extent the Bay Area MOU funds eligible projects with Proposition 1A HSR funds, and sufficient matching funds (at least 50 percent) are provided, we think the San Francisco-San Jose segment qualifies as a usable segment under the bond act.

2. Southern California MOU

As discussed earlier, a precise project list has yet to be developed for the southern California MOU, and we are unable to determine which projects are proposed for funding or even if the projects would all be located within the Phase 1 corridor of the HSR system.[21] Thus, we are unable to say whether the projects that will ultimately be selected would be consistent with the requirements of the bond act for expenditure of Proposition 1A HSR funds.

In addition, unlike the initial 130-mile segment or the San Francisco-San Jose segment, we are unable at this time to identify a "usable segment" on which Proposition 1A HSR funds would be spent under the southern California MOU. South of Palmdale, the authority proposes to construct a new high-speed rail alignment to Los Angeles Union Station, rather than to use a blended system shared with commuter rail. To the extent improvements to the existing commuter rail tracks are contemplated by the southern California MOU, these would not be the tracks to be eventually used by the high-speed trains. Further, although grade-separating the existing commuter rail corridor from streets and highways, and providing capacity within the same right-of-way for future construction of parallel high-speed rail tracks, could be justified as needed for high-speed rail, we are unable to identify an interim service using the finished product of the MOU because existing commuter rail service operates on existing tracks. In that regard, it is not clear that these improvements will comply with the requirements of the bond act that bond proceeds be invested in a usable segment. In any case, until the projects are defined, we do not have enough information to evaluate the proposed expenditures of Proposition 1A HSR funds under the southern California MOU for consistency with the bond act.

Between Los Angeles and Anaheim, to the extent a blended system is employed, it may be possible to identify a usable segment under the bond act because this phase, when completed, would consist of at least two stations (Los Angeles and Anaheim) and can be anticipated to be used by existing passenger rail services in that corridor. However, consistent with other parts of this opinion, we are unable to make a determination in that

[21] As discussed earlier, an expenditure of Proposition 1A HSR funds on a corridor other than the Phase 1 corridor requires a finding of the authority that expenditure of bond proceeds for capital costs in other corridors would advance construction of the system, would be consistent with the criteria contained in subdivision (f) of Section 2704.08, and would not have an adverse impact on the construction of Phase 1 of the HSR system (see paras. (2) and (3), subd. (b), Sec. 2704.04).

regard as the blended concept for Los Angeles-Anaheim has not been fully developed for that segment by the authority and affected regional agencies.

3. Central Valley MOU

While the central valley MOU is still under development and thus the specifics cannot be analyzed here, it is our understanding that it will not propose expenditure of Proposition 1A HSR funds to improve existing conventional rail systems north of Merced, but will rely solely on Proposition 1A connectivity funds, as discussed below.

B. Proposition 1A Connectivity Funds

As discussed earlier, expenditure of the $950 million in Proposition 1A connectivity funds is governed by Section 2704.095, for allocation on a formula basis to various existing operators of conventional rail services. Two subdivisions speak to the purposes for which these funds are to be used.

First, paragraph (1) of subdivision (a) of Section 2704.095 provides that the funds "... shall be allocated to eligible recipients for capital improvements to intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system ... or that provide capacity enhancements and safety improvements." A later sentence refers to "eligible purposes described in subdivision (d)."

Second, subdivision (d) of Section 2704.095 provides that funds shall be "used to pay or reimburse the costs of projects to provide or improve connectivity with the high-speed train system or for the rehabilitation or modernization of, or safety improvements to, tracks utilized for public passenger rail service, signals, structures, facilities, and rolling stock."

Therefore, the authorized uses of the connectivity funds are relatively broad. The funds may be used for capital improvements that become part of the HSR system, capital improvements that provide or improve the connectivity of conventional rail systems with the HSR system, or various other rail capital improvements not directly related to the HSR system. There is no requirement that the improvements undertaken be associated with any particular corridor of the HSR system. Of the $950 million in connectivity funds, the Department of Finance has proposed the appropriation of $812 million during the 2012-13 fiscal year as part of an April finance letter relative to high-speed rail appropriations.

Based on the foregoing, we think that the proposed expenditures of Proposition 1A connectivity funds for rail capital purposes under the three MOUs are likely to be in compliance with the bond act.

VI. Summary

Based on the foregoing, we conclude all of the following:

(1) The revised business plan complies with the requirement of the bond act to give priority to construction of Phase 1 of the HSR system. With respect to the plan's compliance with the design characteristics contained in the bond act, our analysis focuses on those elements of the plan that are part of a proposed blended system that would

accommodate both high-speed trains and conventional commuter trains between San Francisco and San Jose. In this regard, we think the plan raises questions as to whether the HSR system can meet three of the bond act's design characteristics established in Section 2704.09 of the Streets and Highways Code. For two of the three characteristics (maximum travel times and transitioning or bypass of intermediate stations), we have been advised by the authority that the blended system design proposed by the revised business plan will be able to meet those requirements, but we lack the facts necessary to independently assess those claims. For the third characteristic (achievable train headways of five minutes), we have been advised by the authority that the blended system design proposed by the revised business plan will be able to meet this requirement for all trains that are operating between San Francisco and San Jose, but not necessarily with high-speed trains alone. We think it is reasonable to conclude that this design characteristic is met as long as the proposed design is able to achieve five-minute headways through the use of both commuter and high-speed trains. As with the other design characteristics, however, we cannot verify the authority's assertion that the design characteristic is achievable under the revised business plan. Even if the proposed blended system cannot meet these design characteristics, to the extent the business plan continues to retain a "full-build" option for the San Francisco-San Jose segment and the blended system infrastructure forms a part of that full-build option, it is reasonable to conclude that the revised business plan complies with the bond act's design characteristics.

(2) We do not have enough information about the proposed blended system for the Los Angeles-Anaheim segment to make a determination whether that segment would meet the design characteristics required by the bond act.

(3) The construction of the initial 130-mile segment in the central valley complies with the bond act requirement to commence construction with a usable segment. With respect to other requirements relative to the first (preappropration) funding plan for the HSR system, we think those requirements have generally been met, except that the authority is unable to certify completion of all project level environmental clearances necessary to proceed to construction.

(4) The proposed expenditures under the Bay Area MOU for the San Francisco-San Jose segment would likely comply with the bond act's requirement that bond proceeds be invested in a usable segment, but the proposed expenditures are subject to the same questions regarding design characteristics and the use of the blended system infrastructure expressed in (1) above. Additionally, Proposition 1A HSR funds may not be used to acquire electrified commuter rail rolling stock. These concerns do not extend to proposed expenditures from Proposition 1A connectivity funds, which we think the revised business plan proposes to use appropriately.

(5) We do not have enough information on the southern California MOU to determine whether the proposed expenditures of Proposition 1A HSR funds are consistent with the bond act, because the particular projects and their locations have yet to be determined. We also lack sufficient information to assess the central valley MOU in this regard.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
L. Erik Lange
Deputy Legislative Counsel

LEL:jrp

EXHIBIT 2

CALIFORNIA
GENERAL ELECTION
TUESDAY, NOVEMBER 4, 2008

The statutory deadline for placing legislative and initiative measures on the ballot was June 26. However, a new state law that passed after the deadline requires that Proposition 1 be removed from the ballot and be replaced by Proposition 1A. Therefore, although you are receiving information about both measures in the two state voter guides, only Proposition 1A will appear on your November 4, 2008, General Election ballot.

★ OFFICIAL VOTER INFORMATION GUIDE ★

Certificate of Correctness

I, Debra Bowen, Secretary of State of the State of California, do hereby certify that the measure included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 4, 2008, and that this guide has been correctly prepared in accordance with the law.

Witness my hand and the Great Seal of the State in Sacramento, California, on this 18th day of September, 2008.

Debra Bowen
Secretary of State

★ SUPPLEMENTAL ★

This guide contains information regarding one additional measure that has qualified for the November ballot.

AG000001
HSR05121

Secretary of State

Dear Fellow Voter,

Recently you received the **Official Voter Information Guide** for the November 4, 2008, General Election. Since that was printed and mailed, another proposition has been added to the ballot and one has been removed, so my office has created this **Supplemental Official Voter Information Guide.**

The statutory deadline for placing legislative and initiative measures on the ballot was June 26. However, a new state law that passed after the deadline requires that Proposition 1 be removed from the ballot and be replaced by Proposition 1A. *Although voters are receiving information about both measures in the two voter guides they receive from my office, only Proposition 1A will appear on the November 4, 2008, General Election ballot.*

This **Supplemental Official Voter Information Guide** contains impartial analyses of the law and potential costs to taxpayers prepared by Legislative Analyst Elizabeth G. Hill, arguments in favor of and against the ballot measure prepared by proponents and opponents, text of the proposed law proofed by Legislative Counsel Diane F. Boyer-Vine, and other useful information. The printing of the guide was done under the supervision of State Printer Geoff Brandt.

Whether you cast your ballot by mail or at a polling place, I encourage you to take the time to carefully read about each of the 12 statewide measures that will be on your ballot.

For more information about how and where to vote, as well as other ways you can participate in the electoral process, call (800) 345-VOTE or visit *www.sos.ca.gov.*

TABLE OF CONTENTS

CALIFORNIA GENERAL ELECTION

TUESDAY, NOVEMBER 4, 2008

★ SUPPLEMENTAL ★

This guide contains information regarding one additional measure that has qualified for the November ballot.

★ QUICK-REFERENCE GUIDE ★

USE THIS QUICK-REFERENCE GUIDE AND TAKE IT WITH YOU TO THE POLLS!

This guide contains summary and contact information for one additional state proposition appearing on the November 4, 2008, ballot.

Visit our website at *www.sos.ca.gov*

QUICK-REFERENCE GUIDE

PROP 1A SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT.

SUMMARY

Put on the Ballot by the Legislature

To provide Californians a safe, convenient, affordable, and reliable alternative to driving and high gas prices; to provide good-paying jobs and improve California's economy while reducing air pollution, global warming greenhouse gases, and our dependence on foreign oil, shall $9.95 billion in bonds be issued to establish a clean, efficient high-speed train service linking Southern California, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area, with at least 90 percent of bond funds spent for specific projects, with private and public matching funds required, including, but not limited to, federal funds, funds from revenue bonds, and local funds, and all bond funds subject to independent audits? Fiscal Impact: State costs of $19.4 billion, assuming 30 years to pay both principal and interest costs of the bonds. Payments would average about $647 million per year. When constructed, unknown operation and maintenance costs, probably over $1 billion annually; at least partially, and potentially fully, offset by passenger fares.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: The state could sell $9.95 billion in general obligation bonds, to plan and to partially fund the construction of a high-speed train system in California, and to make capital improvements to state and local rail services.

NO A NO vote on this measure means: The state could not sell $9.95 billion in general obligation bonds for these purposes.

ARGUMENTS

PRO California's transportation system is broken: skyrocketing gasoline prices and gridlocked freeways and airports. High-speed trains are the new transportation option that reduces greenhouse gases and dependence on foreign oil. High-speed trains are cheaper than building new highways and airports to meet population growth and require NO NEW TAXES.

CON Prop. 1A is a huge boondoggle. Taxpayers pay at least $640,000,000 *per year* in costs for a government run railroad. There's no guarantee it will ever get built. Expand existing transportation systems instead to cut commutes and save fuel. No on 1A: an open taxpayer checkbook with virtually no accountability.

FOR ADDITIONAL INFORMATION

FOR
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PROPOSITION

1A SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT.

OFFICIAL TITLE AND SUMMARY

SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT.

- Provides long-distance commuters with a safe, convenient, affordable, and reliable alternative to driving and high gas prices.
- Reduces traffic congestion on the state's highways and at the state's airports.
- Reduces California's dependence on foreign oil.
- Reduces air pollution and global warming greenhouse gases.
- Establishes a clean, efficient 220 MPH transportation system.
- Improves existing passenger rail lines serving the state's major population centers.
- Provides for California's growing population.
- Provides for a bond issue of $9.95 billion to establish high-speed train service linking Southern California counties, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area.
- Provides that at least 90% of these bond funds shall be spent for specific construction projects, with private and public matching funds required, including, but not limited to, federal funds, funds from revenue bonds, and local funds.
- Requires that use of all bond funds is subject to independent audits.
- Appropriates money from the General Fund to pay bond principal and interest.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State costs of about $19.4 billion, assuming 30 years to pay off both principal ($9.95 billion) and interest ($9.5 billion) costs of the bonds. Payments of about $647 million per year.
- When constructed, additional unknown costs, probably in excess of $1 billion a year, to operate and maintain a high-speed train system. The costs would be at least partially, and potentially fully, offset by passenger fare revenues, depending on ridership.

FINAL VOTES CAST BY THE LEGISLATURE ON AB 3034 (PROPOSITION 1A)

Senate:	Ayes 27	Noes 10
Assembly:	Ayes 58	Noes 15

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Urban, Commuter, and Intercity Rail. California is served by various types of passenger rail services that include urban, commuter, and intercity rail services. Urban and commuter rail services primarily serve local and regional transportation needs. Examples include services provided by Bay Area Rapid Transit in the San Francisco Bay Area, Sacramento Regional Transit light rail, Metrolink in Southern California, and the San Diego Trolley. These services are generally planned by local or regional governments and are funded with a combination of local, state, and federal monies.

Intercity rail services primarily serve business or recreational travelers over longer distances between cities as well as between regions in California and other parts of the country. Currently, the state funds and contracts with Amtrak to provide intercity rail service, with trains that travel at maximum speeds of up to about 90 miles per hour. There are intercity rail services in three corridors: the Capitol Corridor service from San Jose to Auburn, the San Joaquin service from Oakland to Bakersfield, and the Pacific Surfliner service from San Diego to San Luis Obispo. None of the existing state-funded intercity rail services provide train service between northern California and southern California.

High-Speed Train System. Currently, California does not have a high-speed intercity passenger train system that provides service at sustained speeds of 200 miles per hour or greater. In 1996, the state created the California High-Speed Rail Authority (the authority) to develop an intercity train system that can operate at speeds of 200 miles per hour or faster to connect the major metropolitan areas of California, and provide service between northern California and southern California.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Over the past 12 years, the authority has spent about $60 million for pre-construction activities, such as environmental studies and planning, related to the development of a high-speed train system. The proposed system would use electric trains and connect the major metropolitan areas of San Francisco, Sacramento, through the Central Valley, into Los Angeles, Orange County, the Inland Empire (San Bernardino and Riverside Counties), and San Diego. The authority estimated in 2006 that the total cost to develop and construct the entire high-speed train system would be about $45 billion. While the authority plans to fund the construction of the proposed system with a combination of federal, private, local, and state monies, no funding has yet been provided.

PROPOSAL

This measure authorizes the state to sell $9.95 billion in general obligation bonds to fund (1) pre-construction activities and construction of a high-speed passenger train system in California, and (2) capital improvements to passenger rail systems that expand capacity, improve safety, or enable train riders to connect to the high-speed train system. The bond funds would be available when appropriated by the Legislature. General obligation bonds are backed by the state, meaning that the state is required to pay the principal and interest costs on these bonds.

For more information regarding general obligation bonds, please refer to the section of this ballot pamphlet entitled "An Overview of State Bond Debt."

The High-Speed Train System. Of the total amount, $9 billion would be used, together with any available federal monies, private monies, and funds from other sources, to develop and construct a high-speed train system that connects San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. The bond funds may be used for environmental studies, planning and engineering of the system, and for capital costs such as acquisition of rights-of-way, trains, and related equipment, and construction of tracks, structures, power systems, and stations. However, bond funds may be used to provide only up to one-half of the total cost of construction of each corridor or segment of a corridor. The measure requires the authority to seek private and other public funds to cover the remaining costs. The measure also limits the amount of bond funds that can be used to fund certain pre-construction and administrative activities.

Phase I of the train project is the corridor between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim. If the authority finds that there would be no negative impact on the construction of Phase I of the project, bond funds may be used on any of the following corridors:

- Sacramento to Stockton to Fresno
- San Francisco Transbay Terminal to San Jose to Fresno
- Oakland to San Jose
- Fresno to Bakersfield to Palmdale to Los Angeles Union Station
- Los Angeles Union Station to Riverside to San Diego
- Los Angeles Union Station to Anaheim to Irvine
- Merced to Stockton to Oakland and San Francisco via the Altamont Corridor

The measure requires accountability and oversight of the authority's use of bond funds authorized by this measure for a high-speed train system. Specifically, the bond funds must be appropriated by the Legislature, and the State Auditor must periodically audit the use of the bond funds. In addition, the authority generally must submit to the Department of Finance and the Legislature a detailed funding plan for each corridor or segment of a corridor, before bond funds would be appropriated for that corridor or segment. The funding plans must also be reviewed by a committee whose members include financial experts and high-speed train experts. An updated funding plan is required to be submitted and approved by the Director of Finance before the authority can spend the bond funds, once appropriated.

Other Passenger Rail Systems. The remaining $950 million in bond funds would be available to fund capital projects that improve other passenger rail systems in order to enhance these systems' capacity, or safety, or allow riders to connect to the high-speed train system. Of the $950 million, $190 million is designated to improve the state's intercity rail services. The remaining $760 million would be used for other passenger rail services including urban and commuter rail.

FISCAL EFFECT

Bond Costs. The costs of these bonds would depend on interest rates in effect at the time they are sold and the time period over which they are repaid. While the measure allows for bonds to be issued with a repayment period of up to 40 years, the state's current practice is to issue bonds with a repayment period of up to 30 years. If the bonds are sold at an average interest rate of 5 percent, and assuming a repayment period of 30 years, the General Fund cost would be about $19.4 billion to pay off both principal ($9.95 billion) and interest ($9.5 billion). The average repayment for principal and interest would be about $647 million per year.

Operating Costs. When constructed, the high-speed train system will incur unknown ongoing maintenance and operation costs, probably in excess of $1 billion a year. Depending on the level of ridership, these costs would be at least partially, and potentially fully, offset by revenue from fares paid by passengers.

For text of Proposition 1A, see page 10.

PROP 1A SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT.

★ ARGUMENT IN FAVOR OF PROPOSITION 1A ★

Proposition 1A will bring Californians a safe, convenient, affordable, and reliable alternative to soaring gasoline prices, freeway congestion, rising airfares, plummeting airline service, and fewer flights available.

It will reduce California's dependence on foreign oil and reduce greenhouse gases that cause global warming.

Proposition 1A is a $9.95 billion bond measure for an 800-mile High-Speed Train network that will relieve 70 million passenger trips a year that now clog California's highways and airports—WITHOUT RAISING TAXES.

California will be the first state in the country to benefit from environmentally preferred High-Speed Trains common today in Europe and Asia. Proposition 1A will bring California:

- Electric-powered High-Speed Trains running up to 220 miles an hour on modern track, safely sepatated from other traffic generally along existing rail corridors.
- Routes linking downtown stations in SAN DIEGO, LOS ANGELES, FRESNO, SAN JOSE, SAN FRANCISCO, and SACRAMENTO, with stops in communities in between.
- High-Speed Train service to major cities in ORANGE COUNTY, the INLAND EMPIRE, the SAN JOAQUIN VALLEY, and the SOUTH BAY.
- Nearly a billion dollars to beef up commuter rail systems that connect to High-Speed Trains.

Proposition 1A will save time and money. Travel from Los Angeles to San Francisco in abour 2½ hours for about $50 a person. With gasoline prices today, a driver of a 20-miles-per-gallon car would spend about $87 and six hours on such a trip.

Ten years of study and planning have gone into PREPARING FOR construction, financing, and operation of a California bullet train network modeled on popular, reliable, and successful systems in Europe and Asia. Their record shows that High-Speed Trains deliver, both in service and economy.

Air travelers spend more time on the ground than in the air today. Proposition 1A will create a new transportation choice that improves conditions at our major airports. There's no room for more runways. High-Speed Trains can relieve that demand.

Electric-powered High-Speed Trains will remove over 12 billion pounds of CO_2 and greenhouse gases, equal to the pollution of nearly 1 million cars. And High-Speed Trains require one-third the energy of air travel and one-fifth the energy of auto travel.

Proposition 1A will protect taxpayer interests.

- Public oversight and detailed independent review of financing plans.
- Matching private and federal funding to be identified BEFORE state bond funds are spent.
- 90% of the bond funds to be spent on system construction, not more studies, plans, and engineering activities.
- Bond financing to be available to every part of the state.
- The most cost-efficient construction segments to have the highest priotity.

Vote Yes on Proposition 1A to IMPROVE MOBILITY and inject new vitality into California's economy by creating nearly 160,000 construction-related jobs and 450,000 permanent jobs in related industries like tourism. These are American jobs that cannot be outsourced.

Vote Yes on Proposition 1A.
www.CaliforniaHighSpeedTrains.com

STEVEN B. FALK, President
San Francisco Chamber of Commerce
GARY TOEBBEN, President
Los Angeles Area Chamber of Commerce
FRAN FLOREZ, Vice-Chair
California High-Speed Rail Authority

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 1A ★

No on 1A: A POLITICAL BOONDOGGLE

The same politicians who can't solve our budget crisis and want to raise your taxes think they can run their own government railroad. Even they admit this high cost train hits taxpayers for $40 billion. Even so, this is just a "partial payment" by taxpayers, with NO guarantee it will be completed.

The project wasted $58 million on consultants, European travel, and fancy brochures and now *billions more may be spent without laying an inch of track—money we'd have to repay even if the project failed.*

The special intetests backing Ptop. 1A are notorious for their *multi-billion dollar cost overruns.*

No on 1A: $20 BILLION IN DEBT REPAYMENT = INCREASED TAXES

Politicians admit that Prop. 1A will annually cost California taxpayers $647 million each year for 30 years to repay debt. With California's already high debt levels, this will lead politicians to raise your taxes. California is America's 4th highest taxed state and high taxes chase jobs out of California. Passage of Prop. 1A may result in California passing New York to be the highest taxed state in America.

No on 1A: EXPAND EXISTING TRANSIT SYSTEMS INSTEAD

Californians' problem is not getting from San Francisco to Los Angeles, it's getting into work each day.

Investing the same amount of money in regional transit and highway congestion relief would reduce pollution and our reliance on foreign oil.

NO ON PROP. 1A: WEAK accountability, NO congestion relief for suffering commuters, and TAXPAYERS CAN'T AFFORD IT!

HON. CHUCK DEVORE, California State Assemblyman
RICHARD TOLMACH, President
California Rail Foundation
MIKE ARNOLD, Ph.D., Co-Chair
Marin Citizens for Effective Transportation

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

★ ARGUMENT AGAINST PROPOSITION 1A ★

NO on Prop. 1A: $20 Billion Cost for Taxpayers

Prop. 1A is a boondoggle that will cost taxpayers at least $20 billion in principal and interest. The whole project could cost $90 billion—the most expensive railroad in history. No one really knows how much this will ultimately cost.

Taxpayers will foot this bill—it's not "free money." According to the measure (Article 3, Section 2704.10) ". . . the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds . . .." This measure will take $20 billion ($2,000 for an average family of four) out of the general fund over the life of the bonds.

NO on Prop. 1A: California Taxpayers Can't Afford Higher Budget Deficits

With our budget crisis, billions in red ink, pending cuts to health care, the poor, parks, and schools, now is NOT THE TIME to add another $20 billion in state debt and interest. The state already has over $100 BILLION DOLLARS in voter approved bond debt and our bond rating is already among the worst in the nation.

NO on Prop. 1A—Better Uses for Taxpayer Dollars

California has higher priorities than this $20 BILLION DOLLAR boondoggle.

What would $20 billion buy?

- 22,000 new teachers, firefighters, or law enforcement personnel for 10 years.
- Health care for all children in the state for many years.
- Updating and improving California's water system to provide a reliable supply of safe, clean water.
- Upgrade and expand existing transportation systems including roads and transit throughout California, *which would really reduce traffic and emissions.*

NO on Prop. 1A—Virtually No Accountability

Politicians, bureaucrats, and special interests will control the money, not voters. In fact, the lead contractor for this project is Parsons-Brinckerhoff, the same builder of the infamous "Big Dig" in Boston which had *billions* in cost overruns.

There is not ONE citizen member on the new "peer review group." They are all politicians and bureaucrats.

NO on Prop. 1A—An Open Taxpayer Checkbook

Section 8(e) says the bond funds are ". . . intended to encourage the federal government and the private sector to make a significant contribution toward the construction . . .."

NOTE THE WORD "ENCOURAGED"—that's bureaucratic language for "we will spend taxpayer money regardless of whether we ever get a penny from the private sector or the federal government."

In fact, $58 million in taxpayer money has ALREADY been spent on this project and not ONE FOOT of track has been laid. Now they want us to trust them with BILLIONS more.

NO on Prop. 1A—Promoted by Special Interests for Special Interests

The Association for California High Speed Trains is promoting this boondoggle. Their Board represents out-of-state special interests (France, Pennsylvania, New Jersey, Maryland, New York City, Texas, and Illinois), many of whom stand to make millions if this measure passes.

Please Join Us in Voting "NO" on Prop. 1A.

Log on, learn more, and read it for yourself: www.DerailHSR.com.

HON. TOM McCLINTOCK, State Senator
HON. GEORGE RUNNER, State Senator
JON COUPAL, President
Howard Jarvis Taxpayers Association

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 1A ★

California's high-speed rail network requires NO TAX INCREASE and is subject to strict fiscal controls and oversight.

It's simple and fair—once completed, THE USERS OF THE SYSTEM PAY FOR THE SYSTEM. That's why taxpayer watchdog groups support Proposition 1A.

Electric High-Speed Trains will give Californians a *real* alternative to skyrocketing gasoline prices and dependence on foreign oil while reducing greenhouse gases. Building high-speed rail is cheaper than expanding highways and airports to meet California's population growth.

Gridlock, hassles of flying and long-distance auto travel have become very onerous. Proposition 1A will save time. Travel intercity downtown to downtown throughout California on High-Speed Trains faster than automobile or air—AT A CHEAPER COST!

California's transportation system is out-of-date and deteriorating. We need options to poorly maintained roads, jammed runways, and congested highways. Californians need what most of the civilized world has—high-speed rail. We've fallen so far behind other states and nations that our crumbling infrastructure threatens our economy.

A 220-mile-an-hour statewide rail system will give Californians a faster, environmentally friendly alternative for travel.

Proposition 1A will create 160,000 construction-related jobs and 450,000 permanent jobs.

Proposition 1A is endorsed by law enforcement experts, business leaders, environmentalists, and Californians looking for safe, affordable, and reliable transportation.

Signers of the ballot argument against Proposition 1A are habitual opponents of transportation improvements. Their claims are wrong and their data simply made up.

Californians need to invest in modern, effective transportation.

Vote Yes on Proposition 1A.

www.CaliforniaHighSpeedTrains.com

JIM EARP, Executive Director
California Alliance for Jobs
BOB BALGENORTH, President
State Building & Construction Trades Council of California
LUCY DUNN, President
Orange County Business Council

This section provides an overview of the state's current situation involving bond debt. It also discusses the impact that the bond measures on this ballot, if approved, would have on the state's debt level and the costs of paying off such debt over time.

Background

What Is Bond Financing? Bond financing is a type of long-term borrowing that the state uses to raise money for various purposes. The state obtains this money by selling bonds to investors. In exchange, it agrees to repay this money, with interest, according to a specified schedule.

Why Are Bonds Used? The state has traditionally used bonds to finance major capital outlay projects such as roads, educational facilities, prisons, parks, water projects, and office buildings (that is, public infrastructure-related projects). This is done mainly because these facilities provide services over many years, their large dollar costs can be difficult to pay for all at once, and the different taxpayers who pay off the bonds benefit over time from the facilities. Bonds also have been used to help finance certain private infrastructure, such as housing.

What Types of Bonds Does the State Sell? The state sells three major types of bonds to finance projects. These are:

- ***General Obligation Bonds.*** Most of these are directly paid off from the state's General Fund, which is largely supported by tax revenues. Some, however, are paid for by designated revenue sources, with the General Fund only providing back-up support in the event the revenues fall short. (An example is the Cal-Vet program, under which bonds are issued to provide home loans to veterans and are paid off using veterans' mortgage payments.) General obligation bonds must be approved by the voters and their repayment is guaranteed by the state's general taxing power.
- ***Lease-Revenue Bonds.*** These bonds are paid off from lease payments (primarily financed from the General Fund) by state agencies using the facilities the bonds finance. These bonds do not require voter approval and are not guaranteed by the state's general taxing power. As a result, they have somewhat higher interest costs than general obligation bonds.
- ***Traditional Revenue Bonds.*** These also finance capital projects but are not supported by the General Fund. Rather, they are paid off from a designated revenue stream generated by the projects they finance—such as bridge tolls. These bonds also are not guaranteed by the state's general taxing power and do not require voter approval.

Budget-Related Bonds. Recently, the state has also used bond financing to help close major shortfalls in its General Fund budget. In March 2004, the voters approved Proposition 57, authorizing $15 billion in general obligation bonds to help pay off the state's accumulated budget deficit and other obligations. Of this amount, $11.3 billion was raised through bond sales in May and June of 2004, and the remaining available authorizations were sold in February 2008. These bonds will be paid off over the next several years. They are excluded from the remainder of this discussion, which focuses on infrastructure-related bonds.

What Are the Direct Costs of Bond Financing? The state's cost for using bonds depends primarily on the amount sold, their interest rates, the time period over which they are repaid, and their maturity structure. For example, the most recently sold general obligation bonds will be paid off over a 30-year period with fairly level annual payments. Assuming that a bond issue carries a tax-exempt interest rate of 5 percent, the cost of paying it off with level payments over 30 years is close to $2 for each dollar borrowed—$1 for the amount borrowed and close to $1 for interest. This cost, however, is spread over the entire 30-year period, so the cost after adjusting for inflation is considerably less—about $1.30 for each $1 borrowed.

The State's Current Debt Situation

Amount of General Fund Debt. As of June 1, 2008, the state had about $53 billion of infrastructure-related General Fund bond debt outstanding on which it is making principal and interest payments. This consists of about $45 billion of general obligation bonds and $8 billion of lease-revenue bonds. In addition, the state has not yet sold about $68 billion of authorized general obligation and lease-revenue infrastructure bonds. Most of these bonds have been committed to projects, but the projects involved have not yet been started or those in progress have not yet reached their major construction phase.

General Fund Debt Payments. We estimate that General Fund debt payments for infrastructure-related general obligation and lease-revenue bonds were about $4.4 billion in 2007–08. As previously authorized but currently unsold bonds are marketed,

outstanding bond debt costs will rise, peaking at approximately $9.2 billion in 2017–18.

Debt-Service Ratio. One indicator of the state's debt situation is its debt-service ratio (DSR). This ratio indicates the portion of the state's annual revenues that must be set aside for debt-service payments on infrastructure bonds and therefore are not available for other state programs. As shown in Figure 1, the DSR increased in the early 1990s and peaked at 5.4 percent before falling back to below 3 percent in 2002–03, partly due to some deficit-refinancing activities. The DSR then rose again beginning in 2003–04 and currently stands at 4.4 percent for infrastructure bonds. It is expected to increase to a peak of 6.1 percent in 2011–12 as currently authorized bonds are sold.

Effects of the Bond Propositions on This Ballot

There are four general obligation bond measures on this ballot, totaling $16.8 billion in new authorizations. These include:

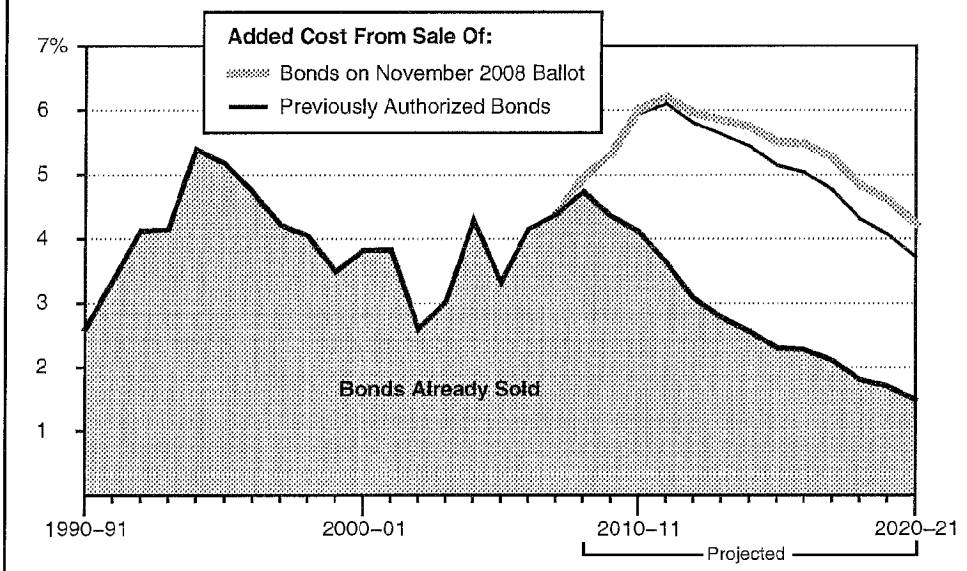
- Proposition 1A, which would authorize the state to issue $9.95 billion of bonds to finance a high-speed rail project.
- Proposition 3, which would authorize the state to issue $980 million of bonds for capital improvement projects at children's hospitals.
- Proposition 10, which would authorize the state to issue $5 billion of bonds for various renewable energy, alternative fuel, energy efficiency, and air emissions reduction purposes.
- Proposition 12, which would authorize the state to issue $900 million of bonds under the Cal-Vet program to be paid off from mortgage payments.

Impacts on Debt Payments. If the three General Fund-supported bonds on this ballot (Propositions 1A, 3, and 10) are all approved, they would require total debt-service payments over the life of the bonds of about twice their authorized amount. The average annual debt service on the bonds would depend on the timing and conditions of their sales. Once all these bonds were sold, the estimated annual budgetary cost would be about $1 billion.

Impact on the Debt-Service Ratio. Figure 1 shows what would happen to the state's estimated DSR over time if all of the bonds were approved and sold. It would peak at 6.2 percent in 2011–12, and decline thereafter. (Future debt-service costs shown in Figure 1 would be higher if, for example, voters approved additional bonds in elections after November 2008.)

Figure 1

General Fund Debt-Service Ratio[a]



[a] Ratio of annual debt-service payments on infrastructure-related bonds to revenues and transfers.

PROPOSITION 1A

This law proposed by Assembly Bill 3034 of the 2007–2008 Regular Session (Chapter 267, Statutes of 2008) is submitted to the people in accordance with the provisions of Article XVI of the California Constitution.

This proposed law adds sections to the Streets and Highways Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SEC. 9. Chapter 20 (commencing with Section 2704) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 20. SAFE, RELIABLE HIGH-SPEED PASSENGER TRAIN BOND ACT FOR THE 21ST CENTURY

Article 1. General Provisions

2704. This chapter shall be known and may be cited as the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.

2704.01. As used in this chapter, the following terms have the following meanings:

(a) "Committee" means the High-Speed Passenger Train Finance Committee created pursuant to Section 2704.12.

(b) "Authority" means the High-Speed Rail Authority created pursuant to Section 185020 of the Public Utilities Code, or its successor.

(c) "Fund" means the High-Speed Passenger Train Bond Fund created pursuant to Section 2704.05.

(d) "High-speed train" means a passenger train capable of sustained revenue operating speeds of at least 200 miles per hour where conditions permit those speeds.

(e) "High-speed train system" means a system with high-speed trains and includes, but is not limited to, the following components: right-of-way, track, power system, rolling stock, stations, and associated facilities.

(f) "Corridor" means a portion of the high-speed train system as described in Section 2704.04.

(g) "Usable segment" means a portion of a corridor that includes at least two stations.

Article 2. High-Speed Passenger Train Financing Program

2704.04. (a) It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008.

(b) (1) Net proceeds received from the sale of nine billion dollars ($9,000,000,000) principal amount of bonds authorized pursuant to this chapter, upon appropriation by the Legislature in the annual Budget Act, shall be used for (A) planning and engineering for the high-speed train system and (B) capital costs, as described in subdivision (c).

(2) As adopted by the authority in May 2007, Phase 1 of the high-speed train project is the corridor of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim.

(3) Upon a finding by the authority that expenditure of bond proceeds for capital costs in corridors other than the corridor described in paragraph (2) would advance the construction of the system, would be consistent with the criteria described in subdivision (f) of Section 2704.08, and would not have an adverse impact on the construction of Phase 1 of the high-speed train project, the authority may request funding for capital costs, and the Legislature may appropriate funds described in paragraph (1) in the annual Budget Act, to be expended for any of the following high-speed train corridors:

(A) Sacramento to Stockton to Fresno.

(B) San Francisco Transbay Terminal to San Jose to Fresno.

(C) Oakland to San Jose.

(D) Fresno to Bakersfield to Palmdale to Los Angeles Union Station.

(E) Los Angeles Union Station to Riverside to San Diego.

(F) Los Angeles Union Station to Anaheim to Irvine.

(G) Merced to Stockton to Oakland and San Francisco via the Altamont Corridor.

(4) Nothing in this section shall prejudice the authority's determination and selection of the alignment from the Central Valley to the San Francisco Bay Area and its certification of the environmental impact report.

(5) Revenues of the authority, generated by operations of the high-speed train system above and beyond operating and maintenance costs and financing obligations, including, but not limited to, support of revenue bonds, as determined by the authority, shall be used for construction, expansion, improvement, replacement, and rehabilitation of the high-speed train system.

(c) Capital costs payable or reimbursable from proceeds of bonds described in paragraph (1) of subdivision (b) include, with respect to the high-speed train system or any portion thereof, all activities necessary for acquisition of interests in real property and rights-of-way and improvement thereof; acquisition and construction of tracks, structures, power systems, and stations; acquisition of rolling stock and related equipment; mitigation of any direct or indirect environmental impacts of activities authorized by this chapter; relocation assistance for displaced property owners and occupants; other related capital facilities and equipment; and such other purposes related to the foregoing, for the procurement thereof, and for the financing or refinancing thereof, as may be set forth in a statute hereafter enacted. The method of acquisition of any of the foregoing may also be set forth in a statute hereafter enacted.

(d) Proceeds of bonds authorized pursuant to this chapter shall not be used for any operating or maintenance costs of trains or facilities.

(e) The State Auditor shall perform periodic audits of the authority's use of proceeds of bonds authorized pursuant to this chapter for consistency with the requirements of this chapter.

2704.05. Subject to Section 2704.18, the proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the High-Speed Passenger Train Bond Fund, which is hereby created.

2704.06. The net proceeds received from the sale of nine billion dollars ($9,000,000,000) principal amount of bonds authorized pursuant to this chapter, upon appropriation by the Legislature in the annual Budget Act, shall be available, and subject to those conditions and criteria that the Legislature may provide by statute, for (a) planning the high-speed train system and (b) capital costs set forth in subdivision (c) of Section 2704.04, consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008, as subsequently modified pursuant to environmental studies conducted by the authority.

2704.07. The authority shall pursue and obtain other private and public funds, including, but not limited to, federal funds, funds from revenue bonds, and local funds, to augment the proceeds of this chapter.

2704.08. (a) Proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 shall not be used for more than 50 percent of the total cost of construction of each corridor or usable segment thereof of the high-speed train system, except for bond proceeds used for the purposes of subdivision (g).

(b) Not more than 10 percent of the proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 shall be used for environmental studies, planning, and preliminary engineering activities.

(c) (1) No later than 90 days prior to the submittal to the Legislature and the Governor of the initial request for appropriation of proceeds of bonds authorized by this chapter for any eligible capital costs on each corridor, or usable segment thereof, identified in subdivision (b) of Section 2704.04, other than costs described in subdivision (g), the authority shall have approved and submitted to the Director of Finance, the peer review group established pursuant to Section 185035 of the Public Utilities Code, and the policy committees with jurisdiction over transportation matters and the fiscal committees in both houses of the Legislature, a detailed funding plan for that corridor or a usable segment thereof.

(2) The plan shall include, identify, or certify to all of the following:

(A) The corridor, or usable segment thereof, in which the authority is proposing to invest bond proceeds.

(B) A description of the expected terms and conditions associated with any lease agreement or franchise agreement proposed to be entered into by the authority and any other party for the construction or operation of passenger train service along the corridor or usable segment thereof.

(C) The estimated full cost of constructing the corridor or usable segment thereof, including an estimate of cost escalation during construction and appropriate reserves for contingencies.

(D) The sources of all funds to be invested in the corridor, or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means.

(E) The projected ridership and operating revenue estimate based on projected high-speed passenger train operations on the corridor or usable

segment.

(F) All known or foreseeable risks associated with the construction and operation of high-speed passenger train service along the corridor or usable segment thereof and the process and actions the authority will undertake to manage those risks.

(G) Construction of the corridor or usable segment thereof can be completed as proposed in the plan.

(H) The corridor or usable segment thereof would be suitable and ready for high-speed train operation.

(I) One or more passenger service providers can begin using the tracks or stations for passenger train service.

(J) The planned passenger service by the authority in the corridor or usable segment thereof will not require a local, state, or federal operating subsidy.

(K) The authority has completed all necessary project level environmental clearances necessary to proceed to construction.

(d) Prior to committing any proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 for expenditure for construction and real property and equipment acquisition on each corridor, or usable segment thereof, other than for costs described in subdivision (g), the authority shall have approved and concurrently submitted to the Director of Finance and the Chairperson of the Joint Legislative Budget Committee the following: (1) a detailed funding plan for that corridor or usable segment thereof that (A) identifies the corridor or usable segment thereof, and the estimated full cost of constructing the corridor or usable segment thereof, (B) identifies the sources of all funds to be used and anticipates time of receipt thereof based on offered commitments by private parties, and authorizations, allocations, or other assurances received from governmental agencies, (C) includes a projected ridership and operating revenue report, (D) includes a construction cost projection including estimates of cost escalation during construction and appropriate reserves for contingencies, (E) includes a report describing any material changes from the plan submitted pursuant to subdivision (c) for this corridor or usable segment thereof, and (F) describes the terms and conditions associated with any agreement proposed to be entered into by the authority and any other party for the construction or operation of passenger train service along the corridor or usable segment thereof; and (2) a report or reports, prepared by one or more financial services firms, financial consulting firms, or other consultants, independent of any parties, other than the authority, involved in funding or constructing the high-speed train system, indicating that (A) construction of the corridor or usable segment thereof can be completed as proposed in the plan submitted pursuant to paragraph (1), (B) if so completed, the corridor or usable segment thereof would be suitable and ready for high-speed train operation, (C) upon completion, one or more passenger service providers can begin using the tracks or stations for passenger train service, (D) the planned passenger train service to be provided by the authority, or pursuant to its authority, will not require operating subsidy, and (E) an assessment of risk and the risk mitigation strategies proposed to be employed. The Director of Finance shall review the plan within 60 days of its submission by the authority and, after receiving any communication from the Joint Legislative Budget Committee, if the director finds that the plan is likely to be successfully implemented as proposed, the authority may enter into commitments to expend bond funds that are subject to this subdivision and accept offered commitments from private parties.

(e) Subsequent to approval of the detailed funding plan required under subdivision (d), the authority shall promptly inform the Governor and the Legislature of any material changes in plans or project conditions that would jeopardize completion of the corridor as previously planned and shall identify means of remedying the conditions to allow completion and operation of the corridor.

(f) In selecting corridors or usable segments thereof for construction, the authority shall give priority to those corridors or usable segments thereof that are expected to require the least amount of bond funds as a percentage of total cost of construction. Among other criteria it may use for establishing priorities for initiating construction on corridors or usable segments thereof, the authority shall include the following: (1) projected ridership and revenue, (2) the need to test and certify trains operating at speeds of 220 miles per hour, (3) the utility of those corridors or usable segments thereof for passenger train services other than the high-speed train service that will not result in any unreimbursed operating or maintenance cost to the authority, and (4) the extent to which the corridors include facilities contained therein to enhance the connectivity of the high-speed train network to other modes of transit, including, but not limited to, conventional rail (intercity rail, commuter rail, light rail, or other rail transit), bus, or air transit.

(g) Nothing in this section shall limit use or expenditure of proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 up to an amount equal to 7.5 percent of the aggregate principal amount of bonds described in that paragraph for environmental studies, planning, and preliminary engineering activities, and for (1) acquisition of interests in real property and right-of-way and improvement thereof (A) for preservation for high-speed rail uses, (B) to add to third-party improvements to make them compatible with high-speed rail uses, or (C) to avoid or to mitigate incompatible improvements or uses; (2) mitigation of any direct or indirect environmental impacts resulting from the foregoing; and (3) relocation assistance for property owners and occupants who are displaced as a result of the foregoing.

(h) Not more than 2.5 percent of the proceeds of bonds described in paragraph (1) of subdivision (b) of Section 2704.04 shall be used for administrative purposes. The amount of bond proceeds available for administrative purposes shall be appropriated in the annual Budget Act. The Legislature may, by statute, adjust the percentage set forth in this subdivision, except that the Legislature shall not increase that percentage to more than 5 percent.

(i) No failure to comply with this section shall affect the validity of the bonds issued under this chapter.

2704.09. The high-speed train system to be constructed pursuant to this chapter shall be designed to achieve the following characteristics:

(a) Electric trains that are capable of sustained maximum revenue operating speeds of no less than 200 miles per hour.

(b) Maximum nonstop service travel times for each corridor that shall not exceed the following:

(1) San Francisco-Los Angeles Union Station: two hours, 40 minutes.

(2) Oakland-Los Angeles Union Station: two hours, 40 minutes.

(3) San Francisco-San Jose: 30 minutes.

(4) San Jose-Los Angeles: two hours, 10 minutes.

(5) San Diego-Los Angeles: one hour, 20 minutes.

(6) Inland Empire-Los Angeles: 30 minutes.

(7) Sacramento-Los Angeles: two hours, 20 minutes.

(c) Achievable operating headway (time between successive trains) shall be five minutes or less.

(d) The total number of stations to be served by high-speed trains for all of the corridors described in subdivision (b) of Section 2704.04 shall not exceed 24. There shall be no station between the Gilroy station and the Merced station.

(e) Trains shall have the capability to transition intermediate stations, or to bypass those stations, at mainline operating speed.

(f) For each corridor described in subdivision (b), passengers shall have the capability of traveling from any station on that corridor to any other station on that corridor without being required to change trains.

(g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent feasible and shall be financially viable, as determined by the authority.

(h) Stations shall be located in areas with good access to local mass transit or other modes of transportation.

(i) The high-speed train system shall be planned and constructed in a manner that minimizes urban sprawl and impacts on the natural environment.

(j) Preserving wildlife corridors and mitigating impacts to wildlife movement, where feasible as determined by the authority, in order to limit the extent to which the system may present an additional barrier to wildlife's natural movement.

2704.095. (a) (1) Net proceeds received from the sale of nine hundred fifty million dollars ($950,000,000) principal amount of bonds authorized by this chapter shall be allocated to eligible recipients for capital improvements to intercity and commuter rail lines and urban rail systems that provide direct connectivity to the high-speed train system and its facilities, or that are part of the construction of the high-speed train system as that system is described in subdivision (b) of Section 2704.04, or that provide capacity enhancements and safety improvements. Funds under this section shall be available upon appropriation by the Legislature in the annual Budget Act for the eligible purposes described in subdivision (d).

(2) Twenty percent (one hundred ninety million dollars ($190,000,000)) of the amount authorized by this section shall be allocated for intercity rail to the Department of Transportation, for state-supported intercity rail lines that provide regularly scheduled service and use public funds to operate and

maintain rail facilities, rights-of-way, and equipment. A minimum of 25 percent of the amount available under this paragraph (forty-seven million five hundred thousand dollars ($47,500,000)) shall be allocated to each of the state's three intercity rail corridors.

The California Transportation Commission shall allocate the available funds to eligible recipients consistent with this section and shall develop guidelines, in consultation with the authority, to implement the requirements of this section. The guidelines shall include provisions for the administration of funds, including, but not limited to, the authority of the intercity corridor operators to loan these funds by mutual agreement between intercity rail corridors.

(3) Eighty percent (seven hundred sixty million dollars ($760,000,000)) of the amount authorized by this section shall be allocated upon appropriation as set forth in this section to eligible recipients, except intercity rail, as described in subdivision (c) based upon a percentage amount calculated to incorporate all of the following:

(A) One-third of the eligible recipient's percentage share of statewide track miles.

(B) One-third of the eligible recipient's percentage share of statewide annual vehicle miles.

(C) One-third of the eligible recipient's percentage share of statewide annual passenger trips.

The California Transportation Commission shall allocate the available funds to eligible recipients consistent with this section and shall develop guidelines to implement the requirements of this section.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Track miles" means the miles of track used by a public agency or joint powers authority for regular passenger rail service.

(2) "Vehicle miles" means the total miles traveled, commencing with pullout from the maintenance depot, by all locomotives and cars operated in a train consist for passenger rail service by a public agency or joint powers authority.

(3) "Passenger trips" means the annual unlinked passenger boardings reported by a public agency or joint powers authority for regular passenger rail service.

(4) "Statewide" when used to modify the terms in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (a) means the combined total in the state of those amounts for all eligible recipients.

(c) Eligible recipients for funding under paragraph (3) of subdivision (a) shall be public agencies and joint powers authorities that operate regularly scheduled passenger rail service in the following categories:

(1) Commuter rail.

(2) Light rail.

(3) Heavy rail.

(4) Cable car.

(d) Funds allocated pursuant to this section shall be used to pay or reimburse the costs of projects to provide or improve connectivity with the high-speed train system or for the rehabilitation or modernization of, or safety improvements to, tracks utilized for public passenger rail service, signals, structures, facilities, and rolling stock.

(e) Eligible recipients may use the funds for any eligible rail element set forth in subdivision (d).

(f) In order to be eligible for funding under this section, an eligible recipient under paragraph (3) of subdivision (a) shall provide matching funds in an amount not less than the total amount allocated to the recipient under this section.

(g) An eligible recipient of funding under paragraph (3) of subdivision (a) shall certify that it has met its matching funds requirement, and all other requirements of this section, by resolution of its governing board, subject to verification by the California Transportation Commission.

(h) Funds made available to an eligible recipient under paragraph (3) of subdivision (a) shall supplement existing local, state, or federal revenues being used for maintenance or rehabilitation of the passenger rail system. Eligible recipients of funding under paragraph (3) of subdivision (a) shall maintain their existing commitment of local, state, or federal funds for these purposes in order to remain eligible for allocation and expenditure of the additional funding made available by this section.

(i) In order to receive any allocation under this section, an eligible recipient under paragraph (3) of subdivision (a) shall annually expend from existing local, state, or federal revenues being used for the maintenance or rehabilitation of the passenger rail system in an amount not less than the annual average of its expenditures from local revenues for those purposes during the 1998–99, 1999–2000, and 2000–01 fiscal years.

(j) Funds allocated pursuant to this section to the Southern California Regional Rail Authority for eligible projects within its service area shall be apportioned each fiscal year in accordance with memorandums of understanding to be executed between the Southern California Regional Rail Authority and its member agencies. The memorandum or memorandums of understanding shall take into account the passenger service needs of the Southern California Regional Rail Authority and of the member agencies, revenue attributable to member agencies, and separate contributions to the Southern California Regional Rail Authority from the member agencies.

Article 3. Fiscal Provisions

2704.10. (a) Bonds in the total amount of nine billion nine hundred fifty million dollars ($9,950,000,000), exclusive of refunding bonds issued in accordance with Section 2704.19, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal of, and interest on, the bonds as the principal and interest become due and payable.

(b) The Treasurer shall sell the bonds authorized by the committee pursuant to this section. The bonds shall be sold upon the terms and conditions specified in a resolution to be adopted by the committee pursuant to Section 16731 of the Government Code.

2704.11. (a) Except as provided in subdivision (b), the bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law, Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter as though set forth in full in this chapter.

(b) Notwithstanding any provision of the State General Obligation Bond Law, each issue of bonds authorized by the committee shall have a final maturity of not more than 40 years from the date of original issuance thereof.

2704.12. (a) Solely for the purpose of authorizing the issuance and sale of the bonds authorized by this chapter and the making of those determinations and the taking of other actions as are authorized by this chapter, pursuant to the State General Obligation Bond Law, the High-Speed Passenger Train Finance Committee is hereby created. For purposes of this chapter, the High-Speed Passenger Train Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Director of Finance, the Controller, the Secretary of Business, Transportation and Housing, and the chairperson of the authority. Notwithstanding any other provision of law, any member of the committee may designate a representative to act as that member in his or her place and stead for all purposes, as though the member were personally present. The Treasurer shall serve as chairperson of the committee. A majority of the committee shall constitute a quorum of the committee, and may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the authority is designated the "board."

2704.13. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter in order to carry out the actions specified in Sections 2704.06 and 2704.095 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be issued and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized be issued and sold at any one time. The committee shall consider program funding needs, revenue projections, financial market conditions, and other necessary factors in determining the term for the bonds to be issued. In addition to all other powers specifically granted in this chapter and the State General Obligation Bond Law, the committee may do all things necessary or convenient to carry out the powers and purposes of this article, including the approval of any indenture relating to the bonds, and the delegation of necessary duties to the chairperson and to the Treasurer as agent for the sale of the bonds. Any terms of any bonds issued under this chapter may be provided under an indenture instead of under a resolution, as determined by the committee.

2704.14. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law

with any duty in regard to the collection of the revenue to do and perform each and every act which is necessary to collect that additional sum.

2704.15. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount equal to the total of the following: (a) that sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable, and (b) the sum necessary to carry out Section 2704.17, appropriated without regard to fiscal years.

2704.16. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for purposes of this chapter. The amount of the request shall not exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of this chapter, less any amount borrowed pursuant to Section 2701.17. The board shall execute such documents as required by the Pooled Money Investment Board to obtain and repay the loan. Any amount loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

2704.17. For the purpose of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of unsold bonds which have been authorized by the committee to be sold for the purpose of carrying out this chapter, less any amount borrowed pursuant to Section 2704.16. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this chapter.

2704.18. All money deposited in the fund which is derived from premium on bonds sold shall be available to pay costs of issuing the bonds, and to the extent not so needed, together with accrued interest derived from sale of the bonds, shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

2704.19. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of bonds shall include approval of the issuance of any bonds issued to refund any bonds originally issued or any previously issued refunding bonds.

2704.20. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

2704.21. Notwithstanding any provision of this chapter or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

Voter Registration Information

Registering to vote just takes a few minutes and, thanks to the National Voter Registration Act (NVRA), you can easily find registration forms in many places throughout the state. The NVRA was passed by Congress and signed into law by President Clinton in 1993. Also known as the "Motor Voter" law, the NVRA requires the Department of Motor Vehicles and many other government agencies to provide people the opportunity to register to vote. To register to vote you must be a U.S. citizen, a California resident, at least 18 years of age on Election Day, and not in prison or on parole for the conviction of a felony.

To request a voter registration form or to find out if you are registered to vote, just call your county elections office or the Secretary of State's toll-free Voter Hotline at 1-800-345-VOTE, or visit *www.sos.ca.gov.* For more information on the NVRA and the Secretary of State's efforts to assist state agencies and county elections officials in complying with it, go to *www.sos.ca.gov/elections/.*

Ballot Measures Defined

Initiatives

Often referred to as "direct democracy," the initiative process is the power of the people to place measures on the ballot. These measures can either create or change statutes (including general obligation bonds) and amend the California Constitution. If the initiative proposes to amend California statute, signatures of registered voters gathered must be equal in number to 5% of the votes cast for all candidates for Governor in the most recent gubernatorial election. If the initiative proposes to amend the California Constitution, signatures of registered voters gathered must be equal in number to 8% of the votes cast for all candidates for Governor in the most recent gubernatorial election. Initiatives must qualify for the ballot 131 days before a statewide election. An initiative requires a simple majority of the public's vote to be enacted.

Legislative Bond Measure

Any bill that calls for the issuance of general obligation bonds must be adopted in each house of the State Legislature by a two-thirds vote, signed by the Governor, and approved by a majority of voters to be enacted. Whenever a bond measure is on a statewide ballot, an overview of California's bond debt is included in the Voter Information Guide. Legislative bond measures must qualify for the ballot 131 days before a statewide election.

Voting by Mail

You may return your voted vote-by-mail ballot by:

1. Mailing it to your county elections office;
2. Returning it in person to any polling place or elections office within your county on Election Day; or
3. Authorizing a legally allowable third party (spouse, child, parent, grandparent, grandchild, brother, sister, or a person residing in the same household as you) to return the ballot on your behalf to any polling place or elections office within your county on Election Day.

In any case, your vote-by-mail ballot must be received by the time polls close at 8:00 p.m. on Election Day. Late-arriving vote-by-mail ballots cannot be counted.

All valid vote-by-mail ballots that county elections officials determine have been cast by eligible voters are counted and included in the official election results. Elections officials have 28 days to complete this process, referred to as the "official canvass," and must report the results to the Secretary of State 35 days after the date of the election.

Provisional Ballots

Provisional ballots are ballots cast by voters who:

- Believe they are registered to vote even though their names do not appear on the official voter registration list;
- Believe the official voter registration list incorrectly lists their political party affiliation; or
- Vote by mail but cannot locate their vote-by-mail ballot and want to vote at a polling place.

All valid provisional ballots that county elections officials determine have been cast by eligible voters are counted and included in the official election results. Elections officials have 28 days to complete this process, referred to as the "official canvass," and must report the results to the Secretary of State 35 days after the date of the election.

VOTER BILL OF RIGHTS

1. You have the right to cast a ballot if you are a valid registered voter.

   A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not in prison or on parole for conviction of a felony, and who is registered to vote at his or her current residence address.
2. You have the right to cast a provisional ballot if your name is not listed on the voting rolls.
3. You have the right to cast a ballot if you are present and in line at the polling place prior to the close of the polls.
4. You have the right to cast a secret ballot free from intimidation.
5. You have the right to receive a new ballot if, prior to casting your ballot, you believe you made a mistake.

   If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Vote-by-mail voters may also request and receive a new ballot if they return their spoiled ballot to an elections official prior to the closing of the polls on election day.
6. You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.
7. You have the right to return a completed vote-by-mail ballot to any precinct in the county.
8. You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.
9. You have the right to ask questions about election procedures and observe the election process.

   You have the right to ask questions of the precinct board and elections officials regarding election procedures and to receive an answer or be directed to the appropriate official for an answer. However, if persistent questioning disrupts the execution of their duties, the board or election officials may discontinue responding to questions.
10. You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's Office.

If you believe you have been denied any of these rights, or you are aware of any election fraud or misconduct, please call the Secretary of State's confidential toll-free Voter Hotline at 1-800-345-VOTE (8683).

Information on your voter registration affidavit will be used by elections officials to send you official information on the voting process, such as the location of your polling place and the issues and candidates that will appear on the ballot. Commercial use of voter registration information is prohibited by law and is a misdemeanor. Voter information may be provided to a candidate for office, a ballot measure committee, or other person for election, scholarly, journalistic, political, or governmental purposes, as determined by the Secretary of State. Driver's license and social security numbers, or your signature as shown on your voter registration card, cannot be released for these purposes. If you have any questions about the use of voter information or wish to report suspected misuse of such information, please call the Secretary of State's Voter Hotline at 1-800-345-VOTE (8683).

Certain voters facing life-threatening situations may qualify for confidential voter status. For more information, please contact the Secretary of State's Safe at Home program toll-free at 1-877-322-5227 or visit the Secretary of State's website at *www.sos.ca.gov*.

California Secretary of State
Election Division
1500 11th Street
Sacramento, CA 95814

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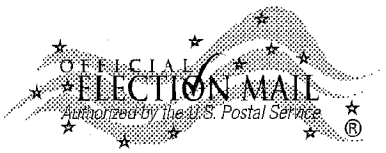

★ **SUPPLEMENTAL** ★

This guide contains information regarding one additional measure that has qualified for the November ballot.

CALIFORNIA
GENERAL ELECTION

www.voterguide.sos.ca.gov

OFFICIAL VOTER INFORMATION GUIDE

Remember to Vote!
Tuesday, November 4, 2008
Polls are open from 7:00 a.m. to 8:00 p.m.

October 6
First day to apply for a vote-by-mail ballot by mail.

October 20
Last day to register to vote.

October 28
Last day that county elections offices will accept any voter's application for a vote-by-mail ballot.

November 4
Last day to apply for a vote-by-mail ballot in person at your county elections office.

For additional copies of the Voter Information Guide in any of the following languages, please call:

English: 1-800-345-VOTE (8683)
Español/Spanish: 1-800-232-VOTA (8682)
日本語 **/Japanese:** 1-800-339-2865
Việt ngữ **/Vietnamese:** 1-800-339-8163
Tagalog: 1-800-339-2957
中文**/Chinese:** 1-800-339-2857
한국어**/Korean:** 1-866-575-1558
TDD: 1-800-833-8683

In an effort to reduce election costs, the State Legislature has authorized the State and counties to mail only one guide to addresses where more than one voter resides. You may obtain additional copies by contacting your county elections office or by calling 1-800-345-VOTE.

OSP 08 109518

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HSR05136

EXHIBIT 3

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

JOHN TOS, AARON FUKUDA; AND COUNTY OF KINGS, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, Petitioners, v. CALIFORNIA HIGH SPEED RAIL AUTHORITY; JEFF MORALES, CEO OF THE CHSRA; GOVERNOR JERRY BROWN; STATE TREASURER, BILL LOCKYER; DIRECTOR OF FINANCE, ANA MATASANTOS; SECRETARY (ACTING) OF BUSINESS, TRANSPORTATION AND HOUSING, BRIAN KELLY; STATE CONTROLLER, JOHN CHIANG; AND DOES I-V, INCLUSIVE, Respondents.	Case No. 34-2011-00113919 ~~[PROPOSED]~~ JUDGMENT DENYING PETITION AND COMPLAINT

FILED BY FAX

The motion of Plaintiffs and Petitioners JOHN TOS, AARON FUKUDA, and COUNTY OF KINGS for judgment on petition and complaint came on regularly for hearing on February 11, 2016, in Department 31 of the Superior Court, the Honorable Michael P. Kenny presiding.

Plaintiffs and Petitioners JOHN TOS, AARON FUKUDA, and COUNTY OF KINGS appeared by counsel Stuart M. Flashman, Esq. and Michael J. Brady, Esq. Defendants and Respondents CALIFORNIA HIGH SPEED RAIL AUTHORITY (hereinafter, "AUTHORITY"); JEFF MORALES, CEO OF THE AUTHORITY; GOVERNOR JERRY BROWN; STATE TREASURER JOHN CHIANG; DIRECTOR OF FINANCE MICHAEL COHEN; BRIAN KELLY, SECRETARY OF THE CALIFORNIA STATE TRANSPORTATION AGENCY; and STATE CONTROLLER BETTY YEE appeared by Deputy Attorney General Sharon L. O'Grady and Supervising Deputy Attorney Tamar Pachter.

After hearing argument, the Court took the matter under submission on February 11, 2016, and on March 4, 2016 issued its Ruling on Submitted Matter: Motion for Judgment on Petition and Complaint (hereinafter "Ruling") on March 4, 2016, a copy of which is attached to this order as Exhibit A, and is incorporated fully herein by this reference.

Accordingly, **IT IS ORDERED, ADJUDGED AND DECREED** that the Petition and Complaint are **DENIED** in their entirety and judgment shall be entered in favor of all Defendants and Respondents and against all Plaintiffs and Petitioners.

DATED: 3/22/16

Honorable Michael P. Kenny
Judge of the Superior Court

Approved as to form:

Dated: March 15, 2016

Stuart M. Flashman

Michael J. Brady
Attorney for Plaintiffs and Petitioners

Dated: 3/17/2016

Raymond L. Carlson
Attorneys for Amicus Curiae Kings County Water District

SA2011103275

Exhibit A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JOHN TOS, AARON FUKUDA, and COUNTY OF KINGS, **Plaintiffs and Petitioners,** **v.** **CALIFORNIA HIGH SPEED RAIL AUTHORITY *et al.*,** **Defendants and Respondents.**	**Case No. 34-2011-00113919-CU-WM-GDS** **RULING ON SUBMITTED MATTER: MOTION FOR JUDGMENT ON PETITION AND COMPLAINT**

I. Factual And Procedural Background

The Legislature enacted the California High-Speed Rail Act in 1996. (Pub. Util. Code, § 185000, et seq)(hereinafter, the "Rail Act.") The Rail Act created the High-Speed Rail Authority (hereinafter, the "Authority") (Pub. Util. Code § 185012) and tasked it with developing and implementing an intercity high-speed rail service (hereinafter, the "HSR system"). (Pub. Util. Code §§ 185030, 185032.)

In 2008, Proposition 1A was placed before California voters to enact the "Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century." The Official Voter Information Guide for November 4, 2008 summarized the decision whether to enact Proposition 1A as,

> "[t]o provide Californians a safe, convenient, affordable, and reliable alternative to driving and high gas prices; to provide good-paying jobs and

> improve California's economy while reducing air pollution, global warming greenhouse gases, and our dependence on foreign oil, *shall $9.95 billion in bonds be issued* to establish a clean, efficient high-speed train service linking Southern California, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area, with at least 90 percent of bond funds spent for specific projects, with private and public matching funds required, including, but not limited to, federal funds, funds from revenue bonds, and local funds, and all bond funds subject to independent audits?" (AG 000003)(emphasis added.)

The Official Voter Information Guide further indicated that a "yes" vote meant "[t]he state could sell $9.95 billion in general obligation bonds, to plan and to partially fund the construction of a high-speed train system in California, and to make capital improvements to state and local rail services." A "no" vote meant "[t]he state could not sell $9.95 billion in general obligation bonds for these purposes." (AG 000003.) The description of Proposition 1A and arguments for and against it, were followed by "an Overview of State Bond Debt." (AG 000008-9.)

California voters approved Proposition 1A (hereinafter, The "Bond Act"). (Streets and Highways Code §§ 2704, *et seq.*[1]) The Bond Act is in Division 3 of the Streets and Highways Code, which Division concerns the "Apportionment and Expenditure of Highway Funds."

The Bond Act identifies requirements the HSR system must meet prior to receipt of the funds, including that the HSR system "shall be designed to achieve the following characteristics...

> (b) Maximum nonstop service travel times for each corridor that shall not exceed the following:
>
> (1) San Francisco-Los Angeles Union Station: two hours, 40 minutes.
>
> (2) Oakland-Los Angeles Union Station: two hours, 40 minutes.
>
> (3) San Francisco-San Jose: 30 minutes...
>
> (c) Achievable operating headway (time between successive trains) shall be five minutes or less...

[1] All further statutory references are to the Streets and Highways Code, unless otherwise indicated.

> (g) In order to reduce impacts on communities and the environment, the alignment for the high-speed train system shall follow existing transportation or utility corridors to the extent feasible and shall be financially viable, as determined by the authority." (§ 2704.09.)

The Authority must prepare, publish, adopt, and submit to the Legislature, a business plan, which they must review and resubmit every two years. (Pub. Util. Code § 185033.) Before committing appropriated bond funds to construction, the Authority must approve and submit a detailed funding plan concerning the specific corridor or usable segment, to the Director of Finance, the peer review group established pursuant to section 185035 of the Public Utilities Code, and the policy committees with jurisdiction over transportation matters and the fiscal committees in both houses of the legislature. (§ 2704.08.) The funding plan must certify that the Authority has completed all necessary project level environmental clearances necessary to proceed to construction. (§ 2704.08, subd. (c)(2)(k).) The Authority cannot commit bond funds to construction until the Director of Finance concludes that "the plan is likely to be successfully implemented as proposed." (§ 2704.08, subd. (d).)

In April 2012 and April 2014, the Authority approved, published, and submitted its 2012 and 2014 Business Plans to the Legislature. (AG 001931, AG 011047.) These plans indicate that Phase I of the system is a "blended system" in which conventional and HSR trains will share tracks, stations, and other facilities. (AG 001936, 001940, 001941, 001948, 001971-001974, 011055, 011060, 011062.) In 2013, the Legislature passed SB 557 (enacting § 2704.76) which provides,

> "(b) Funds appropriated pursuant to Items 2660-104-6043, 2660-304-6043, and 2665-104-6043 of Section 2.00 of the Budget Act of 2012, to the extent those funds are allocated to projects in the San Francisco to San Jose segment, shall be used solely to implement a rail system in that segment that *primarily consists of a two-track blended system* to be used jointly by high-speed rail trains and Peninsula Joint Powers Board commuter trains (Caltrain), with the system to be contained substantially within the existing Caltrain right-of-way." (emphasis added.)

Consequently, the funds appropriated for the San Francisco to San Jose segment are for construction of a blended system.

Plaintiffs filed this matter on November 14, 2011, claiming that the high-speed rail project is not eligible to receive Bond Act funds. Accordingly, Plaintiffs allege it would be illegal to give Defendants these funds to construct the subject high-speed rail system in the Central Valley.

One of Plaintiffs' initially filed claims was previously resolved in this matter via separate trial and appeal to the Third District Court of Appeal. (*California High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676.) The Court of Appeal directed this Court to enter judgment, "validating the authorization of the bond issuance…Further challenges by real parties in interest to the use of bond proceeds are premature." The court also ordered this Court to vacate its ruling requiring the Authority to redo the preliminary section 2704.08, subdivision (c) funding plan after the Legislature appropriated the bond funds. (*Id.* at 684.) In ruling on that matter, the Court of Appeal noted, "[j]udicial intrusion into legislative appropriations risks violating the separation of powers doctrine." (*Id.* at 714.) With regard to Proposition 1A, the court found, "the Bond Act does not curtail the exercise of the Legislature's plenary authority to appropriate."

The remaining claims in this matter are, per letter stipulation dated January 8, 2014:

1. "The currently proposed high-speed rail system does not comply with the requirements of Streets and Highways Code § 2704.09 in that it cannot meet the statutory requirement that the high-speed train system to [sic] be constructed so that the maximum nonstop service travel time for San Francisco – Los Angeles Union Station shall not exceed 2 hours and 40 minutes;
2. The currently proposed high-speed rail system does not comply with the requirements of Streets and Highways Code § 2704.09 in that it will not be financially viable as determined by the Authority and the requirement under § 2704.08(c)(2)(J) that the planned passenger service by the Authority in the corridors or usable segments thereof will not require a local, state, or federal operating subsidy;
3. The currently proposed "blended rail" system is substantially different from

the system whose required characteristics were described in Proposition 1A, and the legislative appropriation towards constructing this system is therefore an attempt to modify the terms of that ballot measure in violation of article XVI, section 1 of the California Constitution and therefore must be declared invalid;

4. If Plaintiffs are successful in any of the above three claims, Proposition 1A bond funds will be unavailable to construct any portion of the Authority's currently-proposed high-speed rail system. Under those circumstances, the $3.3 billion of federal grant funds will not allow construction of a useful project. Therefore, under those circumstances the Authority's expenditure of any portion of the $3.3 billion of federal grant funds towards the construction of the currently-proposed system would be a wasteful use of public funds and would therefore be subject to being enjoined under Code of Civil Procedure § 526a."

The parties briefed these issues and then presented oral argument on February 11, 2015. At the close of the hearing, the Court took the matter under submission.

II. Standard of Review

This case involves numerous claims concerning the compliance of the HSR system as currently proposed with the requirements of the Bond Act.

The interpretation of statutes in such a case is an issue of law on which the court exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In exercising its independent judgment, the Court is guided by certain established principles of statutory construction, which may be summarized as follows.

The primary task of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.) As this matter involves the interpretation of statutes approved by the voters, "ascertaining the will of the electorate is paramount." (*Cal. High-Speed Rail Authority*, 228 Cal.App.4th at 708.) "Statutes adopted by the voters must be construed liberally in favor of the people's right to exercise their reserved powers, and it is the duty of the courts to jealously guard the right of the people by resolving doubts in favor of the use of those reserved powers." (*Id.*)

However, whether a statute is enacted by the voters or passed by the Legislature, the same

basic rules of statutory construction apply. (*Id.*) The starting point for the task of interpretation is the wording of the statute itself, because these words generally provide the most reliable indicator of legislative, or elector, intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

Beyond that, the Court must consider particular statutory language in the context of the entire statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious purpose of the statute where the language appears, and harmonizing the various parts of the statutory enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)

To the extent this matter requires review of administrative actions taken by the Authority, the Court must determine whether those actions constitute an abuse of discretion, namely whether the action was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. (See *Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4th 98, 105-06.)

III. Discussion

A. Requests for Judicial Notice

Plaintiffs have filed a request for judicial notice concerning five documents. Defendants have filed objections to items 1 and 5.

Item 1 requests the Court take judicial notice of the fact that, "beginning in 2011,

Congressional appropriations have provided no funding for the California High-Speed Rail Authority or its project, or any other high-speed rail project, and in fact have rescinded prior funding for high-speed rail projects." Defendants object on the basis that this is irrelevant to any material issue in this matter, contains evidence that was not before the Authority when it made its decision (pursuant to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559), and that the proffered fact is not the proper subject of judicial notice. The Court agrees, based on its analysis herein, that this fact is not relevant to any material issue currently ripe for review in this matter.

Item 5 requests judicial notice of mapping by the California Department of Transportation of California urban areas, which mapping has been integrated into a set of online databases accessible through Google Earth. Defendants object on the basis that the maps are irrelevant to any material issue, the evidence was not properly before the Authority, the evidence is proffered to contradict the Authority's experts, Plaintiffs failed to comply with Rule of Court 3.1306, subdivision (c), and Plaintiffs improperly seek judicial notice of the accuracy of the maps. The Court agrees, based on its analysis herein, that this information is not relevant to any issue that is currently ripe for review.

The request for judicial notice is **GRANTED** as to items 2, 3, and 4, and **DENIED** as to items 1 and 5.

B. The Purpose of the Bond Act

Central to this matter is the answer to the following question: Does the Bond Act simply provide bond financing, conditional upon the satisfaction of certain design criteria, or does it reach further, providing the sole authority by which a high-speed rail system may be constructed by the Authority (regardless of the source of funding)? Plaintiffs urge this Court to read section 2704.04, subdivision (a) as a declaration of the Legislature's intent that any HSR system built in

California must comply with the Bond Act's pre-requisites. Defendants argue, instead, that the Bond Act only prohibits the use of Bond Act funds until the Authority has proven compliance with the system described therein. Consequently, Defendants contend, to the extent the Authority is moving forward with an HSR system utilizing non-Bond Act funds, there is no statutory prohibition to these actions.

In analyzing the meaning of the Bond Act, the Court looks first to the plain language of the relevant statutes. Section 2704.04, subdivision (a) provides,

> "It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008."

Section 2704.04 is located within Streets and Highways Code Division 3, "Apportionment and Expenditure of Highway Funds," Chapter 20, "Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century," Article 2, "High-Speed Passenger Train Financing Program." Section 2704.04 is titled, "Legislative intent; Use of net proceeds from sale of bonds." All of these titles indicate that the Bond Act, including section 2704.04, addresses the *use of funds* to construct a HSR system.

Such an interpretation is supported by the information provided to the voters to assist in determining whether to vote "yes" or "no" on Proposition 1A. The summary in the voter information guide indicated that the voters needed to decide, "*...shall $9.95 billion in bonds be issued* to establish a clean, efficient high-speed train service linking Southern California, the Sacramento/San Joaquin Valley, and the San Francisco Bay Area..." (AG 000003)(emphasis added.) The descriptions of what a "yes" or "no" vote would mean indicate that the result of the vote would determine whether the state could sell $9.95 billion in general obligation bonds in

order to construct an HSR system. (*Id.*) There is no discussion that a "yes" vote on Proposition 1A prohibits the Legislature from utilizing its appropriation powers to construct an HSR system using funds other than the $9.95 billion in general obligation bonds.

As the Court of Appeal held in the prior trial on this matter, "[j]udicial intrusion into legislative appropriations risks violating the separation of powers doctrine." (*Cal. High-Speed Rail Authority*, 228 Cal.App.4th at 714.) "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action." (*Id.*) The Court of Appeal further noted, "the only judicial standard commensurate with the separation of powers doctrine is one of strict construction to ensure that restrictions on the Legislature are in fact imposed by the people rather than by the courts in the guise of interpretation." (*Id.*)(citing *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1218.) With regard to Proposition 1A, the court read the plain language of the statute and found, "the Bond Act does not curtail the exercise of the Legislature's plenary authority to appropriate."[2]

There is nothing in the Bond Act or in the voter information guide that dictates the Legislature cannot use non-Bond Act funds to construct or plan an HSR system absent a showing that the system complies with the Bond Act requirements. The Bond Act did not establish the Authority, the Rail Act did. The Bond Act is, consequently, not the source of the Authority's responsibilities or "powers," which are described in the Rail Act, via Public Utilities Code section 185034. The Bond Act is simply that: a Bond Act. The Authority may not spend any of the $9.95 billion in general obligation bonds absent a showing of compliance with the numerous requirements described in the Bond Act. Additionally, all parties agree that Bond Act proceeds have not been used in the challenged segments and are not currently at issue, as the Authority has

[2] While this ruling concerned whether the Legislature was prohibited from appropriating funds in the absence of a preliminary funding plan, the absence of a clear directive to abdicate appropriation power with regard to non-bond sources leads to the same conclusion here.

not prepared the required funding plans pursuant to section 2704.08. (Opening Brief, p. 3.)

The Court finds that the Bond Act describes criteria that must be met in order to finance an HSR system with Bond Act funds. The Bond Act does not set "restrictions on what type of system [the Authority] could construct regardless of its funding source." (Opening Brief, p. 1.)

It is with this determination in mind that the Court now turns to Plaintiffs' challenges to the HSR system as currently proposed.

C. The Blended System

i. *2005 and 2008 EIRs*

Plaintiffs argue the proposed "blended system" is not consistent with the Bond Act because it fails to comply with the Authority's certified Environmental Impact Reports of November 2005 and July 9, 2008, as required by section 2704.04, subdivision (a).[3] Because the Legislature has mandated the blended system via SB 557 (enacting § 2704.76), neither party argues that this issue is not ripe for review. Accordingly, the Court considers whether the statutorily mandated blended system violates the Bond Act as approved by the voters.

Section 2704.04, subdivision (a) provides,

> "It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego *consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008.*" (emphasis added.)

This section, Plaintiffs argue, evidences the Legislature and voters' intent and expectations that the HSR system will be consistent with the 2005 and 2008 EIRs. The 2005 EIR includes cross-sections for the "Caltrain Shared-Use Alignment" showing four tracks throughout

[3] Defendants maintain Plaintiffs may not argue that the blended system fails to comply because this claim is not squarely within the January 8, 2014 stipulated issues. The Court disagrees and finds that number 3 may be interpreted broadly to allow for Plaintiffs' arguments that the blended system cannot comply with the Bond Act.

the San Francisco to San Jose segment. (H7.011060-H7.011074.) The 2008 EIR includes a set of typical cross sections for the San Francisco to San Jose segment, again showing four tracks. (H7.013158 – H7.013175.) The 2008 EIR further provides that "[t]he Draft Program EIR.EIS analyzes one alignment option between San Francisco and San Jose along the San Francisco Peninsula that would utilize the Caltrain rail right-of-way, and share tracks with express Caltrain commuter rail services…The alignment between San Francisco and San Jose *is assumed to have 4-tracks*, with the two middle tracks being shared by Caltrain and HST and the outer tracks used by Caltrain…" (H7.014212)(emphasis added.)

However, in 2012, the Authority modified the 2005 and 2008 EIRs via the 2012 Bay Area to Central Valley Partially Revised Final Program EIR. An initial blended system (two-tracks shared by Caltrain and HSR trains) in the San Francisco Peninsula is discussed at length in this 2012 EIR. (H7.018234-35, H7.018239-40.) The issue before the Court is whether section 2704.04, subdivision (a) requires the four-track alignment discussed in the 2005 and 2008 EIRs, or whether section 2704.04 must be read in conjunction with section 2704.06 to allow for project modification via subsequently modified environmental studies.

Section 2704.06 is titled, "Availability of proceeds for planning and capital costs," and provides,

> "The net proceeds received from the sale of nine billion dollars ($9,000,000,000) principal amount of bonds authorized pursuant to this chapter, upon appropriation by the Legislature in the annual Budget Act, shall be available, and subject to those conditions and criteria that the Legislature may provide by statute, for (a) planning the high-speed train system and (b) capital costs set forth in subdivision (c) of Section 2704.04, consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008, *as subsequently modified pursuant to environmental studies conducted by the authority.*" (emphasis added.)

Defendants argue section 2704.04, subdivision (a) must be read in conjunction with 2704.06 in order to give meaning to the words "*as subsequently modified pursuant to environmental studies conducted by the authority.*" To hold that the HSR system can only qualify

for Bond Act funds if it meets the design proposed by the 2005 and 2008 EIRS would read the modification language out of section 2704.06. Defendants also contend the Legislature has statutory and Constitutional authority to amend the Bond Act to require a blended system.

When considering a statutory scheme, the Court should not construe individual statutes in isolation, but instead should view the Act as a whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

Plaintiffs argued at length during oral argument that section 2704.06 refers only to the receipt of bond funds, while section 2704.04 provides the general legislative intent that the HSR system comply with the 2005 and 2008 EIRs. Because the schematics included in the 2005 and 2008 EIRs refer only to four-track systems, Plaintiffs argue, a two-track blended system violates the general Legislative intent limiting any HSR system the Authority completes. This argument is contrary to the Court's finding above that the Bond Act concerns itself solely with the use of Bond Act funds. As sections 2704.04 and 2704.06 must be read in the context of the use of Bond Act funds, they must be read together, giving meaning to every word.

Section 2704.06 allows expenditure of Bond Act funds on a system that is "consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008, *as subsequently modified pursuant to environmental studies conducted by the authority.*" To read section 2704.04 as urged by Plaintiffs means that Bond Act funds *cannot* be expended on a system that complies with a modified EIR if it is not consistent with the 2005 and 2008 EIRs. Essentially, Plaintiffs ask this Court to read the words "as subsequently modified pursuant to environmental studies conducted by the authority" out of the Bond Act. Such a reading is

contrary to the direction that the Court should avoid constructions that render any words surplus or a nullity.

Reading section 2704.04 and 2704.06 together, the Court finds that the Authority may use Bond Act funds to construct an HSR system that is compliant with the 2005 and 2008 EIRs, as subsequently modified. As the 2012 Bay Area to Central Valley Partially Revised Final Program EIR modified the subject EIRs to provide for a two-track blended system, in conformance with the provision of section 2704.06, the requirement of a blended system via SB 557 does not violate the Bond Act.

ii. *Minimum headway requirement and trip-time between San Francisco and San Jose*

Defendants argue Plaintiffs' claims concerning the blended system headway and trip-time requirements are not ripe. The Court will consider both claims together.

Plaintiffs contend the blended system violates the Bond Act because it cannot meet the system requirements for operating headways. Section 2704.09, subdivision (c) provides, that the "[t]he high-speed train system to be constructed pursuant to this chapter shall be designed to achieve the following characteristics... Achievable operating headway (time between successive trains) shall be five minutes or less." Plaintiffs argue the blended system can only accommodate a maximum of ten trains per hour, four of which would be HSR trains. (AG 013028, 013074.) Accordingly, there is a fifteen-minute delay between HSR trains on the blended system, in violation of section 2704.09, subdivision (c).

Defendants argue that this, and the remainder of Plaintiffs' arguments are not yet ripe, as the system design Plaintiffs challenge, "today is not final, but continues to evolve and change" making the claims not reviewable. (Opposition, p. 13.) Defendants further contend, "[w]hen the Authority commits bond funds to a specific plan pursuant to section 2704.08, subdivision (d), the

validity of those expenditures will be reviewable." (*Id.*) Defendants argue, "[t]he only final design decisions the Authority has made involve the Merced-Fresno and Fresno-Bakersfield segments of the system, which Plaintiffs do not challenge." (*Id.* at p. 15, FN 11.)

The evidence before the Court indicates that the blended HSR system, as currently proposed, can accommodate ten trains in an hour. This allows for one train approximately every six minutes, with a delay between HSR trains of approximately fifteen minutes. (AG 013028, 013074.) Plaintiffs argue this demonstrates that the Authority cannot currently prove the blended HSR system complies with Section 2704.09, subdivision (c)'s headway requirement. Defendants contend that these claims are premature, and, that if they are ripe, the definition of "train" includes non-HSR trains, and with imminent technology, the system will be able to improve its six-minute headway to the required five-minute headway. Consequently, Defendants argue the system is "designed to achieve" five minute or less operating headway between trains, even though these trains are not all HSR trains.

With regard to operating time between San Francisco and San Jose, section 2704.09, subdivision (b)(3) requires the system to be designed to achieve maximum nonstop service travel time that shall not exceed thirty minutes. In January 2013, the Authority's consultants performed a simulation analysis to determine whether the blended system could currently comply with this requirement. (AG 022899.) Using a travel speed of 110 mph, the memorandum concluded the nonstop travel time would be 32 minutes. Using a speed of 125 mph, the travel time could be reduced to 30 minutes. Via a revised February 7, 2013 memorandum, the Authority's consultants concluded that, using a travel time of 110 mph the nonstop travel time would be 30 minutes. (AG 022912.) There is no clear explanation for this change in conclusions, other than an email exchange requesting that the consultants disregard the 125 mph proposal. (AG 022909.)

On February 11, 2013, this 30-minute travel time at 110 mph was presented to the

Authority via a memorandum. The memorandum indicated that "[f]urther improvements may be achievable through improved train performance, use of tilt technology, more aggressive alignments and higher maximum speeds." (AG 017435.)

Most troubling about this study is the fact that the Authority relied on a 4th and King Caltrain Station as the location in San Francisco from which the travel time should be calculated. (AG 013030, AG 022903, AG 013038.) The Authority acknowledged this fact during oral argument on this matter, and argued that section 2704.09, subdivisions (b)(1) and (3) do not require a specific San Francisco terminal, only requiring that the calculations be between "San Francisco" and the indicated destination. Plaintiffs argue the Bond Act requires the trip to start at the San Francisco Transbay Terminal, a location that is 1.3 miles further north, thus extending the time it will take a train to complete the required distance.

Section 2704.04, subdivision (b)(2) provides that "Phase 1 of the high-speed train project is the corridor of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim." Subdivision (b)(3) identifies specific high-speed train corridors, and lists, "(B) San Francisco Transbay Terminal to San Jose to Fresno." Subdivision (a) identifies that the purpose behind the Bond Act is "construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim..." Consequently, it appears that the intent of the Bond Act was for the system to extend, in San Francisco, to the Transbay Terminal, not stop 1.3 miles short at a 4th and King Caltrain Station. This specific language and indication of intent does not conflict with a general referral to "San Francisco" in section 2704.09 subdivision (b)(1) and (3). It is reasonable to interpret this reference to "San Francisco" as indicating the Transbay Terminal identified as the intended San Francisco location in section 2704.04.

It appears, at this time, that the Authority does not have sufficient evidence to prove the

blended system can currently comply with all of the Bond Act requirements, as they have not provided analysis of trip time to the San Francisco Transbay Terminal, and cannot yet achieve five-minute headways (even allowing for the definition of "train" to include non-HSR trains). However, as Plaintiffs acknowledged during oral argument, the Authority *may be able* to accomplish these objectives at some point in the future. This project is an ongoing, dynamic, changing project. As the Court of Appeal noted, "[b]ecause there is no final funding plan and the design of the system remains in flux…we simply cannot determine whether the project will comply with the specific requirements of the Bond Act…" (*California High-Speed Rail Authority*, 228 Cal.App.4th at 703.)

There is no evidence currently before the Court that the blended system *will not* comply with the Bond Act system requirements. Although Plaintiffs have raised compelling questions about potential future compliance, the Authority has not yet submitted a funding plan pursuant to section 2704.08, subdivisions (c) and (d), seeking to expend Bond Act funds. Thus, the issue of the project's compliance with the Bond Act is not ripe for review. Currently, all that is before the Court is conjecture as to what system the Authority will present in its request for Bond Act funds. This is insufficient for the requested relief.

D. Plaintiffs' remaining claims

Plaintiffs' remaining claims include:

1. The Authority has not proven that, pursuant to section 2704.09, subdivision (g), the HSR system will be financially viable.
2. The HSR system as proposed cannot meet the San Francisco-Los Angeles travel time required by the Bond Act.

For the reasons discussed above, the Court finds these claims are also not ripe for review. As the Court determined first in this ruling, the Bond Act is just that: a bond act providing for bond financing of an HSR system. Until the Authority attempts to utilize Bond Act funds, pursuant to the prerequisites identified in section 2704.08, the financial viability and San

Francisco-Los Angeles corridor designs remain in flux. The record provides, for example, that the Authority continues to focus on system trip time and that the analysis will change as the project changes. (AG 017554, AG 017556.)

As this Court has previously indicated, the key question at this time is whether the Authority has taken any action that precludes compliance with the Bond Act. Plaintiffs have failed to provide evidence at this time that the Authority has taken such an action. This is because, as of today, there are still too many unknown variables, and in absence of a funding plan, too many assumptions that must be made as to what the Authority's final decisions will be. While Plaintiffs have produced evidence that raises substantial concerns about the currently proposed system's ability to ultimately comply with the Bond Act, the Authority has yet to produce the funding plan that makes those issues ripe for review. Thus, Plaintiffs' claims must be denied.

IV. Conclusion

Via Proposition 1A, the voters enacted the "Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century." This Bond Act provided for financing of a high-speed rail system, to be designed and constructed by the High-Speed Rail Authority (established by the 1996 Rail Act). In order to qualify for financing, the Authority must be able to prove the system it proposes can attain certain standards, including performance times, and financial viability. While the blended system does not appear to have been initially considered by the 2005 and 2008 EIRs, section 2704.06 allows for a system that complies with the EIRs, *as modified*. The blended system complies with the 2012 modification, thus complying with the Bond Act requirements.

As of the date of this ruling, the Authority has not submitted a section 2704.08 funding plan, and consequently has not sought to utilize any Bond Act funds on the challenged system. To the extent non-Bond Act funds are being expended, Plaintiffs have not identified any basis upon which this Court should enjoin the use of said funds. The HSR system is not final, but instead

continues to evolve and change. As such, the issue of whether the HSR system complies with the Bond Act is not ripe for review.

The Petition and Complaint are **DENIED**.

In accordance with Local Rule 1.06, counsel for Defendants is directed to prepare an order denying the petition and complaint, incorporating this ruling as an exhibit to the order, and a separate judgment; submit them to counsel for Plaintiffs for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with Rule of Court 3.1312(b).

DATED: March 4, 2016

MICHAEL P. KENNY

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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County of Sacramento

Dated: March 4, 2016

By: S. LEE
Deputy Clerk

DECLARATION OF SERVICE

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. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 17, 2016, I served the attached

[PROPOSED] JUDGMENT DENYING PETITION AND COMPLAINT

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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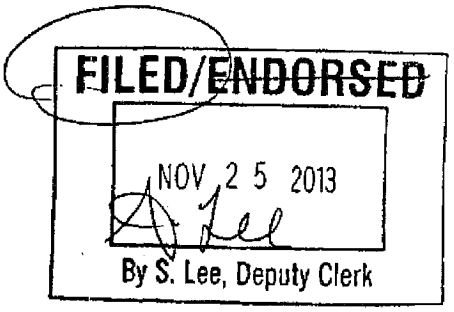
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 17, 2016, at San Francisco, California.

Susan Chiang
Declarant

Signature

EXHIBIT 4



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JOHN TOS, AARON FUKUDA, COUNTY OF KINGS

Plaintiffs and Petitioners,

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY, et al.,

Defendants and Respondents.

Case No. 34-2011-00113919-CU-MC-GDS

RULING ON SUBMITTED MATTER: REMEDIES ON PETITION FOR WRIT OF MANDATE

Introduction

On August 16, 2013, the Court issued a ruling in this matter finding that defendant/respondent California High Speed Rail Authority abused its discretion by approving a detailed funding plan under Streets and Highways Code section 2704.08(c) that did not comply with the requirements of subdivisions (c)(2)(D) and (K) of that statute. In that ruling, the Court directed the parties to submit further briefing on the issue of remedies.[1]

Principally, the Court directed the parties to address the issue of whether issuance of a writ of mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan would be a remedy with any real and practical effect. The Court also directed the parties to address the issue of

[1] In this ruling, the Court refers to defendant/respondent California High Speed Rail Authority as "the Authority", and to plaintiffs/petitioners John Tos, et al., as "plaintiffs".

whether the writ should address subsequent actions by the Authority, such as contract approvals, as well as whether any such approvals involve the commitment or expenditure of Proposition 1A bond proceeds.

The parties have filed briefing and supporting evidence in response to the Court's ruling. On November 8, 2013, the Court held a hearing on the issue of remedies and heard oral argument by counsel for the parties. At the close of the hearing, the Court took the matter under submission.

The Court has considered the evidence submitted by the parties, as well as their oral and written arguments, and now issues its ruling on remedies.

Preliminary Procedural and Evidentiary Issues

The Authority's special application to strike or disregard argument in plaintiffs' reply brief, or for permission to file a surreply brief, is denied. Plaintiffs' reply brief did not raise entirely new arguments, but rather addressed and rebutted arguments in the Authority's opposition brief. The Authority was not precluded from addressing plaintiffs' rebuttal arguments in full at the hearing.

All requests for judicial notice filed by the parties in this phase of the proceedings are granted, and all evidentiary objections are overruled.

Issuance of a Writ of Mandate

The primary issue of concern to the Court in relation to remedies was whether issuance of a writ of mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan would have any real and practical effect. Based on the briefing and evidence the parties have submitted, the Court is satisfied that issuance of the writ would have a real and practical effect in this case.

Specifically, the Court is persuaded that the preparation and approval of a detailed funding plan that complies with all of the requirements of Streets and Highways Code section 2704.08(c) is a necessary prerequisite for the preparation and approval of a second detailed funding plan under subdivision (d) of the statute, which in turn is a necessary prerequisite to the Authority's expenditure of any bond proceeds for construction or real property and equipment acquisition, other than for costs described in subdivision (g).

The conclusion that the subdivision (c) funding plan is a necessary prerequisite to the subdivision (d) funding plan is supported by the fact that only the first funding plan is required to make the critical

certification that the Authority has completed "all necessary project level environmental clearances necessary to proceed to construction". (See, Streets and Highways Code section 2704.08(c)(2)(K).) The subdivision (d) funding plan is not required to address environmental clearances. Thus, the subdivision (d) funding plan, as a precondition for proceeding to construction, depends upon the adequacy of the subdivision (c) funding plan in at least one critical respect.

In the absence of a valid subdivision (c) funding plan making the required certification of environmental clearances, the Authority could prepare and submit a subdivision (d) funding plan and proceed to commit and spend bond proceeds without ever certifying completion of the necessary environmental clearances. As plaintiffs argue, proceeding to construction without all required project-level environmental clearances could result in substantial delays in the project, or even a need to redesign or relocate portions of the project, potentially at great cost to the State and its taxpayers. Streets and Highways Code section 2704.08 is carefully designed to prevent that from happening, but that design is frustrated if obvious deficiencies in the first funding plan are essentially ignored.

Issuance of a writ of mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan based on the finding that the funding plan did not comply with all of the requirements of subdivision (c) thus will have a real and practical effect: it will establish that the Authority has not satisfied the first required step in the process of moving towards the commitment and expenditure of bond proceeds.

The Court therefore grants the petition for writ of mandate, and orders that a writ of mandate shall issue pursuant to Code of Civil Procedure section 1085, directing the Authority to rescind its approval of the November 3, 2011 funding plan.

The Court also asked the parties to address the issue of whether the writ should invalidate any subsequent approvals made by the Authority in reliance on the November 3, 2011 funding plan. Plaintiffs focused on the Authority's approval of construction contracts with CalTrans and Tutor-Perini-Parsons, arguing that those contracts necessarily involve the present commitment of bond proceeds for construction-related activities that do not fall within the so-called "safe harbor" provision of Streets and

Highways Code section 2704.08(g). Much of the argument on this issue centered on the Authority's present use of federal grant money, which is not governed by Proposition 1A, and whether the manner in which such federal funds were being used and spent virtually guarantees that Proposition 1A bond proceeds eventually will have to be spent under these two contracts in order to satisfy federal matching fund requirements.

The Court has reviewed the evidence submitted by the parties and is not persuaded that approval of the two contracts at issue, or the use of federal grant money thus far, necessarily amounts to the present commitment of Proposition 1A bond funds for activities outside the scope of subdivision (g). Significantly, the Authority demonstrated that the two contracts contain termination clauses. Thus, the Authority is not necessarily committed to spending the full face amount of those contracts. Similarly, plaintiffs did not demonstrate convincingly that federal grant money that has been spent so far and that currently is projected to be spent necessarily exceeds the amount of funds available to the Authority from funds other than Proposition 1A bond proceeds, and therefore inevitably must be matched with Proposition 1A bond proceeds. It is simply unclear at this time how the pattern of spending on the project will develop.

The Court therefore concludes that the writ of mandate should not include any provision directing the Authority to rescind its approval of the CalTrans or Tutor-Perini-Parsons contracts.

Other Remedies

In their briefing and argument, plaintiffs ask the Court to order other remedies, including an injunction prohibiting the Authority from submitting a funding plan pursuant to subdivision (d) until it prepares and approves a funding plan that complies with subdivision (c); a temporary restraining order or injunction prohibiting the Authority from using federal grant money while this action is pending; and an order directing a full accounting of past and projected expenditures on the high-speed rail project.

The Court finds that none of these remedies are appropriate at this point in the proceedings.

There is no evidence before the Court that indicates that the Authority is preparing, or is ready to submit, a subdivision (d) funding plan at this point. There is thus no basis for concluding that the

Authority is threatening to violate any applicable law or order of this Court relating to the preparation and submission of such a plan, and no basis for issuing injunctive relief to halt such action.

There is also no evidence before the Court that the Authority is using, or planning to use, federal grant money in violation of any applicable law or order of this Court. Plaintiffs' argument that an injunction is necessary to prevent the commitment of Proposition 1A bond funds or the waste of federal funds while this action is pending is not persuasive. As discussed above, the Court is not persuaded that the Authority's use and projected use of federal grant money necessarily amounts to the present commitment of Proposition 1A bond proceeds. Moreover, the Authority's use of federal grant money is not regulated by Proposition 1A or its funding plan requirements.

Finally, the Court finds no proper basis on which to order a full accounting. Plaintiffs have not demonstrated that there has been any impropriety in the expenditure of federal grant money, or of other funds subject to the funding plan requirements of Streets and Highways Code section 2704.08(c) or (d), that would require an accounting as a remedy.

The Court accordingly denies all requests for remedies other than the issuance of a writ of mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan.

Plaintiffs' Remaining Writ Claims and Status of Individual Defendants

The Authority requests dismissal of plaintiffs' remaining writ of mandate claims. At the hearing on this matter, counsel for plaintiffs agreed on the record that, aside from the writ of mandate claims addressed in the Court's August 16, 2013 ruling, all other writ of mandate claims were not ripe and could be dismissed, and that plaintiffs intended to proceed on their claims under Code of Civil Procedure section 526a. The Court therefore orders all remaining writ of mandate claims dismissed.

The Authority also requests dismissal of all individual defendants named in this case. The request for dismissal is denied on the ground that some or all of the individual defendants may be proper parties in the remaining causes of action under Code of Civil Procedure section 526a, as they may have a role in the use and expenditure of Proposition 1A bond proceeds, and could be necessary parties if any injunctive relief is ordered. The writ of mandate that will be issued pursuant to the Court's August 16, 2013 ruling

shall direct only the Authority to take specified action, and shall not direct any action on the part of any of the individual defendants.

As previously agreed in an informal status and scheduling conference held with the Court on November 8, 2013, all parties are directed to appear for a continued status and scheduling conference in Department 31 at 1:30 p.m. on Friday, December 13, 2013 to address further proceedings, including trial, on plaintiffs' claims under Code of Civil Procedure section 526a.

Conclusion

The petition for writ of mandate is granted for the reasons stated in the Court's ruling issued on August 16, 2013. A writ of mandate shall issue pursuant to Code of Civil Procedure section 1085 directing the Authority to rescind its approval of the November 3, 2011 funding plan. No other relief is ordered at this time.

Counsel for plaintiffs is directed to prepare an order granting the petition and a writ of mandate in accordance with the Court's rulings in this matter; submit them to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and issuance of the writ in accordance with Rule of Court 3.1312(b).

DATED: November 25, 2013

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record or by email as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Dated: November 25, 2013

Superior Court of California,
County of Sacramento

By: S. LEE
Deputy Clerk

EXHIBIT 5

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

KINGS COUNTY, a political subdivision of the State of California; KINGS COUNTY FARM BUREAU, a California nonprofit corporation; CALIFORNIA CITIZENS FOR HIGH-SPEED RAIL ACCOUNTABILITY, a California nonprofit corporation; COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation; CALIFORNIA RAIL FOUNDATION, a California Nonprofit Corporation; and TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California Nonprofit Corporation;

Petitioners

v.

SURFACE TRANSPORTATION BOARD; UNITED STATES OF AMERICA;

Respondents

No.

PETITION FOR REVIEW

[28 U.S.C. §§ 2321, 2342; FRAP 15]

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Attorney for Petitioners California Rail Foundation, Community Coalition on High-Speed Rail, and Transportation Solutions Defense and Education Fund

1. Kings County, a subdivision of the State of California, Kings County Farm Bureau, a California nonprofit corporation ("KCFB"), California Citizens for High-Speed Rail Accountability, a California nonprofit corporation ("CCHSRA"), Community Coalition on High-Speed Rail, a California nonprofit corporation ("CC-HSR"), California Rail Foundation, a California nonprofit corporation ("CRF"), and Transportation Solutions Defense and Education Fund, a California nonprofit corporation ("TRANSDEF," and the foregoing, collectively, "Petitioners") hereby petition the Court for review of the Order of the Surface Transportation Board ("STB") on the Petition for Declaratory Order ("Petition for Order") of Real Party in Interest California High-Speed Rail Authority ("CHSRA"), an agency of the State of California (Financial Docket No. 35861) entered on December 12, 2014. ("STB Order[1]"), and of the STB's decision of May 4, 2015 denying reconsideration of the earlier decision.

2. The Petition for Order sought a declaration from the STB that injunctive relief in any state court action brought under the California Environment Quality Act ("CEQA") pertaining to CHSRA's certification of a Final Environmental Impact Report ("FEIR") for the Fresno to Bakersfield segment of its proposed high-speed rail system (the "HSR Project") was preempted under the provisions of the Interstate Commerce Commission Termination Act ("ICCTA").

3. On or about December 12, 2014, the STB issued its order on CHSRA's Petition for Order. The STB Order went well beyond what was requested of it and declared that CEQA was preempted for all purposes under the ICCTA

[1] A copy of the STB Order is attached hereto as Exhibit "A".

for the Fresno to Bakersfield segment. (See STB Order at p.15.) On or about December 29, 2014, Petitioners and others filed Petitions for Reconsideration of the STB Order. On or about May 4, 2015, the STB decided, on a 1-1 vote, to refuse to grant the Petitions for Reconsiderations,[2] thereby rendering the order of December 12, 2014 final.

4. Because all of the Petitioners herein reside in the State of California, under 28 U.S.C. §2343, jurisdiction is proper in the Ninth Circuit Court of Appeal.

5. Relief is sought on the basis that the STB's order, as affirmed and made final by the denial of the petition for reconsideration, was in error in that:

a. It ignores the fact that CEQA is not primarily a regulatory statute, but an informational statute intended to assure that the decision makers, and the public, are properly informed of the significant environmental consequences of a pending decision and ways in which those consequences could feasibly be mitigated or avoided, and that the CHSRA had the authority under CEQA to find any mitigation measure or alternative identified through the environmental review process legally infeasible if it would conflict with an STB ruling. For that reason, and parallel to the STB's allowing the application of the National Environmental Policy Act ("NEPA"), CEQA's provisions likewise should continue to apply and not be preempted;

b. It ignores the fact that the project applicant herein is not a typical private rail line owner but an agency of the State of

[2] A copy of that order,which was served on May 5, 2015, is attached hereto as Exhibit B.

California, and consequently, under *Nixon v. Missouri Municipal League* (2004) 541 U.S. 125, preemption should not apply because the ICCTA does not clearly express an intent to interfere with a sovereign power of a state to oversee its own subordinate governmental entities; and

c. Under the market participant exception to federal preemption under the Commerce Clause, a state's actions to control the behavior of its own component entities, as would a private party, are not preempted. In this instance, the California Legislature created CHSRA as a component agency within the state's government and intended CEQA to apply to this agency as a state-run enterprise. For that reason as well, CEQA should not be preempted.

d. It violates Petitioners' constitutional right to seek redress of grievances in violation of the federal Constitution (First Amendment) and the California Constitution (Art. I, §3).

e. It violates the separation of powers doctrine under both the federal and California Constitutions.

f. It violates the Tenth Amendment to the federal Constitution by interfering with the sovereign powers of the State of California.

6. CHSRA had also sought a determination in the California Court of Appeal for the Third Appellate District that application of CEQA to its high-speed rail projects was preempted by the ICCTA. That request was made in the context of an appeal that included Petitioners TRANSDEF, CRF, and CC-HSR from the judgment of the Sacramento County Superior Court granting in part a petition for writ of mandate under CEQA regarding a

Program-level Environmental Impact Report ("PEIR")[3] for the San Francisco to Merced segment of CHSRA's high-speed rail project. The Court of Appeal, after full briefing of the issue, issued a published decision, *Town of Atherton et al. v. California High Speed Rail Authority* (2014) 228 Cal.App.4th 314, which concluded that application of CEQA to the HSR Project was not preempted by the ICCTA, based on the market participant exception to preemption under the commerce clause. CHSRA did not seek review of that decision by the California Supreme Court.

7. CHSRA, and others, asked the California Supreme Court to depublish the *Town of Atherton* decision. On October 29, 2014, the California Supreme Court denied the request for depublication. That decision is therefore final.

8. On September 29, 2014, in a case not involving the HSR Project, the California First District Court of Appeal issued a published decision in the case *Friends of Eel River et al. v. North Coast Rail Authority et al.* (2014) 230 Cal.App.4th 85. That decision broadly concluded that application of CEQA to public rail projects was preempted under the ICCTA. On December 10, 2014, the California Supreme Court granted review of the Court of Appeal's decision, effectively depublishing the *Friends of Eel River* case, and review of that case is currently pending before the California Supreme Court, with briefing expected to be completed by the beginning of August. (Case number S222472.) The California Supreme Court's decision on review is expected to resolve the conflict between the *Friends of Eel River* and *Town of Atherton* decisions.

9. On or about February 9, 2015, Petitioners Kings County, KCFB, CCHSRA, CRF, and TRANSDEF, along with Kern County, filed a petition

[3] The document was issued as a Program EIR/Program EIS. However, the state court challenge pertained solely to the EIR.

for review of the STB's December 12, 2014 decision in this Court. (Case number 15-70386.) On or about the above-same date, Dignity Health, a California nonprofit public benefit corporation, also filed a petition for review, but in the District of Columbia Circuit. (Case number 15-1030.)

10. On or about March 3, 2015, the STB filed a motion to dismiss case number 15-1030 for lack of jurisdiction. On or about May 4, 2015, the Court of Appeal granted the motion, and the case was dismissed without any ruling on the merits.

11. On or about March 4, 2015, the STB filed a motion to dismiss case number 15-70386 for lack of jurisdiction. On or about June 11, 2015, the Court of Appeal granted the motion, and the case was dismissed without any ruling on the merits.

12. For the above reasons, Petitioners seek the following:

    a. An order reversing the orders issued by the STB and remanding the matter with direction that the STB enter an order recognizing that, for the reasons presented above, application of CEQA to the CHSRA for both the present Fresno to Bakersfield segment and other portions of the high-speed rail system authorized by the Legislature are not preempted by the ICCTA.

    b. A stay of any effect of the STB Order pending this Court's final determination on the merits.

Dated: June 11, 2015

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By: S/ Stuart M. Flashman

Exhibit A

44072
EB

SERVICE DATE – LATE RELEASE DECEMBER 12, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35861

CALIFORNIA HIGH-SPEED RAIL AUTHORITY—PETITION FOR DECLARATORY ORDER

Digest:[1] The Board concludes that 49 U.S.C. § 10501(b) preempts application of the California Environmental Quality Act, to the extent discussed below, to the construction of a high-speed passenger rail line between Fresno and Bakersfield, Cal.

Decided: December 12, 2014

On October 9, 2014, the California High-Speed Rail Authority (Authority) filed a petition requesting that the Board issue a declaratory order regarding the availability of injunctive remedies under the California Environmental Quality Act (CEQA) to prevent or delay construction of an approximately 114-mile high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Line). The request for a declaratory order will be granted, as discussed below.

BACKGROUND

The Authority's petition concerns construction of the Line, which would be the second section of the planned statewide California High-Speed Train System (HST System). The HST System would, when completed, provide high-speed intercity passenger rail service over more than 800 miles of new rail line throughout California. The Board found in 2013 that it has jurisdiction over the HST System. Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera & Fresno Cntys., Cal. (HST System Jurisdiction Decision), FD 35724, slip op. at 2 (STB served Apr. 18, 2013) (Vice Chairman Begeman concurring in part and dissenting in part); Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera & Fresno Cntys., Cal. (Merced-to-Fresno), FD 35724, slip op. at 12-15 (STB served June 13, 2013) (Vice Chairman Begeman concurring in part and dissenting in part and Commissioner Mulvey concurring). The Board has granted petitions for exemption, subject to environmental and other conditions, permitting construction of the first segment of the HST System, between Merced and Fresno, Cal., and for the Line. Id. at 17-28; Cal. High-Speed Rail Auth.—Constr. Exemption—

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

in Fresno, Kings, Tulare, & Kern Cntys., Cal. (Fresno-to-Bakersfield), FD 35724 (Sub-No. 1) (STB served August 12, 2014) (Vice Chairman Miller concurring and Commissioner Begeman dissenting). The Authority states that it has commenced work on the Merced to Fresno segment and is currently in the process of implementing and/or procuring construction contracts for a majority of the Line.

In its petition, the Authority requests that the Board issue an expedited declaratory order finding that CEQA injunctive remedies are not available with respect to the Line. The Authority states that seven lawsuits have been filed challenging its compliance with CEQA with respect to the Line and that the petitioners seek injunctive remedies under CEQA that would prevent or delay the Authority's ability to proceed with construction of the Line. The Authority argues that 49 U.S.C. § 10501(b) preempts such CEQA remedies because, if successful, injunctive relief would enjoin construction of a Board-authorized project. The Authority asserts that it completed the CEQA environmental review and documentation process for the Line in May 2014. Therefore, according to the Authority, the Board need not address whether CEQA is generally preempted with respect to the Line; rather the Board need only address whether injunctive remedies under CEQA that would result in a work stoppage are available as a remedy in the CEQA enforcement lawsuits that have been filed against the Authority.

The Authority notes that the Board has previously found that § 10501(b) preempts CEQA with respect to a line subject to Board jurisdiction, citing DesertXpress Enterprises, LLC—Petition for Declaratory Order, FD 34914 (STB served June 27, 2007), and North San Diego County Transit Development Board—Petition for Declaratory Order, FD 34111 (STB served August 21, 2002). The Authority argues that, while it elected to complete the CEQA process for the Line even after the Board had determined that it had jurisdiction over the HST System, it made clear during the environmental review process for the Line that it was not waiving any preemption arguments related to CEQA that might be available to the Authority, in the event of a court challenge to its CEQA compliance.[2]

The Authority further claims that Town of Atherton v. California High-Speed Rail Authority, 175 Cal. Rptr. 3d 145 (Ct. App. 2014), in which the California Court of Appeal held that the "market participant" doctrine[3] negated § 10501(b) preemption, should not affect the Board's decision in this proceeding. According to the Authority, the Atherton court affirmed a lower court decision finding that the Authority had complied with CEQA (specifically, that its programmatic environmental documentation concerning routing for the HST System was proper). As a result, the Authority states, Atherton did not decide the issue the Authority asks the Board to address here – whether a state court under CEQA can enjoin construction of a line the Board has authorized. The Authority also contends that the market participation doctrine was misapplied by the court in Atherton, as another California Court of Appeal recently found in

[2] Pet. 10 n.8.

[3] An explanation of the doctrine, and why the Board believes it does not apply here, is set forth below.

Friends of the Eel River v. North Coast Railroad Authority, 178 Cal. Rptr. 3d 752 (Ct. App. 2014), petition for review accepted by the California Supreme Court on December 10, 2014.

Rail Unions[4] and the State Building and Construction Trades Council of California support the Authority's petition. Other commenters (collectively, Opponents)[5] request that the Board deny the petition.[6] According to Opponents, the Board should not issue a decision in this proceeding because Atherton conclusively addresses the issues presented here, and the doctrines of res judicata, collateral estoppel, and waiver preclude a decision by the Board. Opponents claim, relying on Atherton, that the market participant doctrine exception to preemption applies here. Opponents also argue that § 10501(b) preemption would intrude upon the state of California's sovereignty by interfering with the internal controls and limitations the state has placed on the Authority, its own agency.

Furthermore, Opponents argue that expedited consideration of the petition is unnecessary and that the preemption issue the Authority asks the Board to address is not ripe. According to Opponents, the Authority has no immediate plans to begin construction of the Line. Therefore, Opponents assert, the injunctive relief that the Authority claims could delay the project is not imminent and likely would not occur before July 2015, the earliest that a hearing on the merits of the pending CEQA lawsuits is expected. Opponents also point out that Eel River, the California state court decision that disagreed with the Atherton court's analysis of the market participant doctrine in the context of § 10501(b) preemption, may be appealed to the California Supreme

[4] The Brotherhood of Maintenance of Way Employes Division/IBT; the Brotherhood of Railroad Signalmen; the International Association of Sheet Metal, Air and Transportation Workers Mechanical Division; the American Train Dispatchers Association; the Brotherhood of Locomotive Engineers and Trainmen/IBT; the National Conference of Firemen and Oilers District of Local 32BJ, SEIU; and the International Brotherhood of Electrical Workers (collectively, Rail Unions) filed a joint reply.

[5] Opponents include the litigants in the seven CEQA lawsuits (County of Kings, Citizens for High Speed Rail Accountability, Kings County Farm Bureau, City of Bakersfield, County of Kern, Dignity Health, First Free Will Baptist Church of Bakersfield, Coffee-Brimhall LLC, and the City of Shafter (collectively, CEQA Litigants)); Community Coalition on High-Speed Rail, Transportation Solutions Defense and Education Fund, and California Rail Foundation (collectively, Transportation Groups); United States Representatives David G. Valadao, Jeff Denham, Kevin McCarthy, and Devin G. Nunes; Senator Andy Vidak and Assemblywoman Diane L. Harkey of the California State Legislature; Friends of Rose Canyon; Madera County Farm Bureau (Farm Bureau); MEL's Farms; Roar Foundation; Jacqueline Ayer; Carol Bender; William C. Descary; Kathy Hamilton; and Alan Scott.

[6] Union Pacific Railroad Company (UP) also filed a reply. UP does not take a position regarding the preemption issues but requests that the Board not issue any decision that would compromise UP's ability to protect its freight rail network.

Court.[7] According to Opponents, the disposition of any such appeal would clarify the preemption issues raised in this proceeding. Therefore, Opponents argue that if the Board does not deny the Authority's petition, it should order additional briefing and/or wait to issue a decision.

On November 18, 2014, the Authority filed a motion for leave to reply and a reply. The Authority acknowledges that Board rules prohibit such a reply, but it argues that its filing will ensure that the Board has a complete record in this proceeding and the filing will not delay the proceeding or prejudice any party. On November 20, 2014, Transportation Groups filed an opposition to the motion for leave to reply, or, in the alternative, a motion for leave to file surreply. Transportation Groups argue that the Board should deny the Authority leave to reply because the filing would prejudice opposing parties by denying them the opportunity to respond to new arguments and would impermissibly give the Authority opportunity to reargue and expand upon previous arguments. In the alternative, Transportation Groups request that the Board grant parties 10 days to file replies to the Authority's November 18 filing.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate controversy or remove uncertainty. In this case, there is uncertainty as to whether, and the extent to which, the Board would find that CEQA is preempted with regard to the Line. Accordingly, we instituted a proceeding to consider the issues raised in the Authority's petition and provided an opportunity for interested persons to file replies. Following careful consideration of the Authority's petition and the opponents' arguments, we will issue this declaratory order to provide our views on the preemption issue.

Procedural issues. We will not order additional briefing in this proceeding. The procedural schedule that we adopted provided 28 days for any interested persons to file substantive replies, which we believe was enough time for parties to do so. In fact, many parties filed substantive replies in the time period we provided, and we believe the existing record provides an adequate basis for us to consider and address the issues presented here.[8]

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[7] The Friends of Eel River and Californians for Alternatives to Toxics initiated appellate review of the Eel River decision in the California Supreme Court on November 7, 2014 (Friends of Eel River v. North Coast Railroad Authority, Case No. S222472). According to the Supreme Court of California's docket, the petition for review was accepted on December 10, 2014.

[8] We will grant the petitions for leave to intervene filed by Farm Bureau, Roar Foundation, and Transportation Groups. We will accept late-filed replies of Senator Vidak; U.S. Representatives Valadao, Denham, McCarthy, and Nunes; and MEL's Farms in the interest of compiling a more complete record. Roar Foundation's request for an extension of time will be denied because Roar Foundation has already filed a substantive comment, and, as noted, we have a sufficient record to address the issues in this proceeding. Roar Foundation argues that the proceeding should be delayed to allow argument from parties that may be affected by future segments of the HST System. However, the Board's decision instituting a proceeding invited

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We will deny the Authority's motion for leave to file a reply. Our rules do not permit a reply to a reply. 49 C.F.R. § 1104.13(c). Here, the parties have provided extensive arguments on the scope of federal preemption as it applies to the Line. A reply by the Authority is not necessary to provide the information we need to provide our views on preemption and address matters within the Board's expertise. Transportation Groups' opposition to motion for leave to reply or, in the alternative, motion for leave to file surreply is therefore denied as moot.

We also will not delay issuing a decision addressing the preemption issue. The issue is ripe for a decision because several CEQA lawsuits have been filed and, regardless of Opponents' suggestions to the contrary, permanent injunctive relief has already been requested and a preliminary injunction could be requested at any time in those pending lawsuits. Moreover, the Authority states that, contrary to the claims of some of the Opponents, it is in the process of implementing and/or procuring construction contracts for a majority of the Line and uncertainty regarding the preemption issue could impact its ability to proceed. Lastly, this decision will inform interested parties and the California Supreme Court of our views on federal preemption of CEQA and the market participant doctrine as they relate to this matter involving railroad transportation within the Board's jurisdiction under § 10501(b). See Atherton, 175 Cal. Rptr. 3d at 161 n.4 (noting that, as the agency authorized by Congress to administer the Interstate Commerce Act, the Board is "uniquely qualified" to address whether § 10501(b) preempts state law and that a request to the Board for a declaratory order would be the remedy for the Authority's preemption claims). Thus, we will issue this decision now to assist in the resolution of the conflict between Atherton and Eel River on federal preemption of CEQA in cases involving rail line construction.

Waiver. Transportation Groups suggest that the Authority has waived its right to assert any CEQA preemption arguments before the Board because they failed to raise the issue sooner.[9] We disagree.

Since the Board asserted jurisdiction over the HST project in April 2013, the Authority has consistently explained in its environmental documentation that it reserves the right to assert federal preemption in response to any potential legal challenge to its CEQA compliance.[10] Thus, it has expressly stated that it does not waive the right to claim preemption.

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comments from all interested parties. To the extent there are additional arguments related to future segments that have not been presented here, parties may raise them in future proceedings.

[9] See Transportation Groups Reply 5-6.

[10] See Pet. 10 n.8 (quoting Fresno-Bakersfield HST Segment Final EIR/EIS 1-4: "[c]ompleting the state environmental review process does not waive any preemption argument that may be available to the Authority in the event of a legal challenge"; and citing Palmdale-Burbank HST Segment Notice of Preparation, n.1, repeating that the Authority reserved its right to assert preemption).

In addition, the fact that the Authority did not previously seek a ruling on preemption in the Board's previous proceedings concerning the HST System does not amount to a waiver, as those proceedings did not squarely involve the CEQA preemption issue now presented to the Board. In decisions issued in April and June 2013, the Board held that it had jurisdiction over the HST project, HST System Jurisdiction Decision, slip op. at 2, and authorized the construction of the Merced to Fresno HST section, Merced-to-Fresno, slip op. at 12-15. In Fresno-to-Bakersfield, in a decision issued on August 12, 2014, the Board authorized construction of the Line. While the Authority possibly could have raised the CEQA preemption issue during the course of those proceedings, the preemption issue was not directly relevant to those proceedings (such that the Board would have needed to decide the issue at that time), nor would it have affected the outcome of those proceedings.[11]

Transportation Groups suggest that the Authority could have asked the state court in Atherton to refer the CEQA preemption issue to the Board. However, while the Authority could have asked for such a referral from the court, it was not required,[12] and a decision not to request such a referral does not mean the Authority's arguments before the Board are waived.[13] Also,

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[11] In deciding whether to authorize a proposed rail construction (whether under the 49 U.S.C. § 10901 formal application process or, as here, the exemption process in 49 U.S.C. § 10502), the Board considers and weighs the evidence before it on the transportation merits of the proposed construction and the adequacy of the environmental review under the National Environmental Policy Act. Those are the issues that the Board analyzed in both Fresno-to-Bakersfield and Merced-to-Fresno (where the Board also explained why the HST System was within its jurisdiction as part of the interstate rail system).

[12] See 14500 Ltd. LLC—Pet. for Declaratory Order, FD 35788, slip op. at 2 (STB served June 5, 2014) (issues involving the federal preemption provision contained in 49 U.S.C. § 10501(b) can be decided by the Board or the courts in the first instance); Jie Ao & Xin Zhou—Pet. for Declaratory Order, FD 35539, slip op. at 4, 7-8 (STB served June 6, 2012) (explaining that state court may resolve preemption issues, as long as it applies applicable Board and court precedent).

[13] The issue of whether a party has waived an argument usually (though not always) arises on appeal after a party fails to present the argument to the Board during the course of on-going Board proceedings. In such a case, a reviewing court will generally deem the argument waived and will not address it because the Board has not had the opportunity to address the issue in the first instance. See Erie-Niagara Rail Steering Comm. v. STB, 247 F.3d 437, 443-44 (2d Cir. 2001); W. Res., Inc. v. STB, 109 F.3d 782, 793-94 (D.C. Cir. 1997). See also Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc., 435 U.S. 519, 553-54 (1978) (explaining that parties need to forcefully raise issues during the course of agency's proceedings).

Here, there are no other current proceedings involving the Authority or the Line pending before the Board. The Authority has now raised the issue of potential CEQA preemption for this rail transportation project by requesting that the Board institute a declaratory order proceeding under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to address the uncertainty that now exists regarding

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the Authority's decision not to appeal the Atherton decision to the California Supreme Court (or ultimately even the United States Supreme Court)[14] does not affect whether the Authority has waived its CEQA preemption arguments before the Board. A decision not to appeal a state court judgment does not affect whether a party has timely raised arguments or issues before the Board.

Collateral estoppel and res judicata. Opponents argue that res judicata (claim preclusion) and collateral estoppel (issue preclusion) prohibit the Board from granting the Authority's petition because the Atherton court has already addressed the issue of whether CEQA is preempted with respect to the Line.[15] We believe neither issue nor claim preclusion bars the Board from issuing a declaratory order providing its views in the circumstances presented here. As discussed in more detail below, two California state appellate courts have now issued conflicting opinions addressing whether CEQA is preempted by § 10501(b). In Atherton, a California Court of Appeal held that CEQA was not preempted by § 10501(b) with respect to the Authority's programmatic environmental documentation concerning routing of the HST System. More recently, however, another California Court of Appeal found in Eel River that CEQA was preempted by § 10501(b) where, as with the Line, the case involves rail transportation within the Board's jurisdiction. Because of these conflicting opinions regarding CEQA preemption and because the Board is "uniquely qualified" to determine the preemption question,[16] the Board provides this interpretation of its statute pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721 in order to remove the uncertainty that exists with regard to the Board's preemption analysis.

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the issue. Neither of those statutory provisions contains a time limit for when a declaratory order must be requested.

[14] See Transportation Groups Reply 6.

[15] Transportation Groups Reply 4-11; CEQA Litigants Reply 3-4. Claim preclusion "embodies the principle 'that a party who once has had *a chance to* litigate a claim before an appropriate tribunal usually ought not to have another chance to do so.'" SBC Commc'ns v. FCC, 407 F.3d 1223, 1229 (D.C. Cir. 2005) (discussing general elements of claim preclusion under federal law); see also Brother Records, Inc. v. Jardine, 432 F.3d 939, 943 (9th Cir. 2005) (discussing the elements of claim preclusion under California law). Issue preclusion "bars relitigation of an issue by a party 'that has *actually litigated [the] issue.*'" SBC Commc'ns, 407 F.3d at 1229.

[16] Atherton, 175 Cal. Rptr. 3d at 161 n.4. See N.Y. & Atl. Ry. v. STB, 635 F.3d 66, 70 (2d Cir. 2011); Adrian & Blissfield R.R. v. Vill. of Blissfield, 550 F.3d 533, 539 (6th Cir. 2008); New Orleans & Gulf Coast Ry. v. Barrois, 533 F.3d 321, 331 (5th Cir. 2008); Emerson v. Kan. City S. Ry., 503 F.3d 1126, 1130 (10th Cir. 2007); Green Mountain v. Vermont, 404 F.3d 638, 642 (2d Cir. 2005) ("the Transportation Board is 'uniquely qualified to determine whether state law . . . should be preempted' by the Termination Act."); see also Jie Ao & Xin Zhou—Pet. for Declaratory Order, slip op. at 4, 7-8 (a state court may resolve preemption issues, as long as it applies Board and court precedent). Moreover, in this case, one of the conflicting opinions could frustrate the Board's recent approval of the construction of the Line, as discussed below.

Section 10501(b) Preemption. The Interstate Commerce Act is "among the most pervasive and comprehensive of federal regulatory schemes." Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981). The preemption provision of the Act, as broadened by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, expressly provides that the jurisdiction of the Board over "transportation by rail carriers" is "exclusive." 49 U.S.C. § 10501(b). The statute defines "transportation" expansively to encompass any property, facility, structure or equipment "related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use." 49 U.S.C. § 10102(9). Moreover, "railroad" is defined broadly to include a switch, spur, track, terminal, terminal facility, freight depot, yard, and ground, used or necessary for transportation. 49 U.S.C. § 10102(6). Section 10501(b) expressly provides that "the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." Section 10501(b) thus is intended to prevent a patchwork of local regulation from unreasonably interfering with interstate commerce. See Norfolk S. Ry.—Pet. for Declaratory Order, FD 35701, slip op. at 6 & n.14 (STB served Nov. 4, 2013); H.R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 808. As the courts have stated, it is "difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations" than § 10501(b). CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996).

In interpreting the reach of § 10501(b) preemption, the Board and the courts have found that it prevents states or localities from intruding into matters that are directly regulated by the Board (e.g., rail carrier rates, services, construction, and abandonment). It also prevents states and localities from imposing requirements that, by their nature, could be used to deny a rail carrier's ability to conduct rail operations. Thus, state or local permitting or preclearance requirements, including environmental permitting or preclearance requirements, are categorically preempted as to any rail lines and facilities that are an integral part of rail transportation. See Green Mountain R.R., 404 F.3d at 643; City of Auburn v. United States, 154 F.3d 1025, 1027-31 (9th Cir. 1998) (if local authorities have the ability to impose environmental permitting regulations on railroads, this power will in fact amount to economic regulation if the carrier is prevented from constructing, acquiring, operating, or abandoning a line).

Other state actions may be preempted as applied – that is, only if they would have the effect of unreasonably burdening or interfering with rail transportation, which is a fact-specific determination based on the circumstances of each case. See N.Y. Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252 (3d Cir. 2007) (federal law preempts "state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation"); Joint Pet. for Declaratory Order—Bos. & Me. Corp. & Town of Ayer (Ayer), 5 S.T.B. 500 (2001), recons. denied (STB served Oct. 5, 2001); Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry., FD 33466, slip op. at 2 (STB served Feb. 27, 2001); Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry., 4 S.T.B. 380, 387 (1999).

Not all state and local regulations that affect rail carriers are preempted by § 10501(b). State and local regulation is appropriate where it does not interfere with rail operations. Localities retain their reserved police powers to protect the public health and safety so long as their actions do not unreasonably burden interstate commerce. Green Mountain, 404 F.3d at 643. Thus, the Board has stated that it is reasonable for states and localities to request rail carriers to: (1) share their plans with the community when they are undertaking an activity for which another entity would require a permit; (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin. Ayer, 5 S.T.B. at 511. Electrical, plumbing, and fire codes also are generally applicable. Green Mountain, 404 F.3d at 643. State and local action, however, must not have the effect of foreclosing or unduly restricting the rail carrier's ability to conduct its operations or otherwise unreasonably burden interstate commerce. CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 5 (STB served May 3, 2005). In short, states and towns may exercise their traditional police powers over the development of rail property to the extent that the regulations "protect public health and safety, are settled and defined, can be obeyed with reasonable certainty, entail no extended or open-ended delays, and can be approved (or rejected) without the exercise of discretion on subjective questions." Green Mountain, 404 F.3d at 643.

Finally, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., applies to rail constructions like the HST System that require a license under 49 U.S.C. § 10901, and the Board can adopt appropriate environmental mitigation conditions in response to concerns raised by the parties, including local entities, during the NEPA review.[17] Indeed, to reduce or mitigate potential environmental impacts of proposed constructions discovered during the NEPA review, the Board usually imposes extensive environmental mitigation conditions on rail construction approvals.[18]

Application here. As previously noted, the Authority asks us to issue a declaratory order finding only that a prohibitive injunction under CEQA is preempted, not its compliance with CEQA itself. Specifically, the Authority claims that it does not seek preemption of other injunctive

[17] The Board's decision permitting construction of the Line came after extensive environmental review had been completed, including preparation of an Environmental Impact Statement (EIS) under NEPA. The Federal Railroad Administration (FRA) was the lead agency in the EIS prepared for the Line, because it is providing some of the funding, but the Board participated in the EIS process as a cooperating agency. After carefully reviewing the EIS, the Board adopted it in its decision in Fresno-to-Bakersfield and required compliance with all of the environmental mitigation imposed by FRA. See Fresno-to-Bakersfield, slip op. at 5-7, 16-19.

[18] See, e.g., Ala. R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Ala., FD 35095, slip op. at 21, App. 1 (STB served Nov. 21, 2011) (imposing 100 mitigation measures on an approximately 35-mile rail line).

remedies such as a court order requiring revised environmental analyses or additional environmental mitigation under CEQA, so long as there is no work stoppage.[19] However, as a practical matter, we find it difficult to separate the prohibitive injunctive remedy available under CEQA from a California state court's ability to enforce compliance with CEQA itself. In other words, if a state court cannot compel compliance with CEQA by ordering a halt to the agency's proposed action, it is unclear how CEQA could be enforced. The primary way a state court could meaningfully enforce CEQA would be to temporarily halt the Authority's ability to proceed with construction (i.e., a prohibitive injunction) pending the completion of any further environmental analysis and development of additional environmental mitigation that the court might find to be required. Indeed, if a California court were to find that the Authority had not fully studied the impact of the Line under CEQA, and in turn that additional mitigation might be required, but the Authority had already begun construction activities or had even completed construction, the court's after-the-fact order could have already been rendered meaningless. Therefore, because we do not have a persuasive argument for separating CEQA's prohibitive remedy from its other injunctive remedies, we discuss the core issue as whether CEQA as a whole – which is usually enforced through a third-party enforcement action – is preempted with regard to the Line.

Applying the well-established preemption principles here, the Board concludes that CEQA is categorically preempted by § 10501(b) in connection with the Line. As the Board has previously found, CEQA is a state preclearance requirement that, by its very nature, could be used to deny or significantly delay an entity's right to construct a line that the Board has specifically authorized, thus impinging upon the Board's exclusive jurisdiction over rail transportation. DesertXpress Enters., LLC—Pet. for Declaratory Order, slip op. at 5 (CEQA *per se* preempted for proposed 200-mile high-speed passenger system). See also N. San Diego Cnty. Transit Dev. Bd.—Pet. for Declaratory Order, slip op. at 9 (finding state and local requirement to apply for permit and prepare environmental report before constructing track to be preempted); Eel River, 178 Cal. Rptr. 3d at 767-71 (CEQA preempted for railroad projects because, in the context of railroad operations, CEQA "is not simply a health and safety regulation imposing an incidental burden on interstate commerce"). Accord City of Auburn, 154 F.3d at 1027-31; Green Mountain, 404 F.3d at 642-45. In addition, a CEQA enforcement suit in this context attempts to regulate a project that is directly regulated by the Board. Section 10501(b) expressly preempts any state law attempts to regulate rail construction projects, as they are under the Board's exclusive jurisdiction. See CSX Transp., Inc.—Pet. for Declaratory Order, slip op. at 3.

Moreover, while the Board has recognized that voluntary agreements between rail carriers and state or local entities might not be preempted under § 10501(b),[20] we conclude that any implied agreement allegedly created by the Authority's voluntary compliance with CEQA's

[19] Pet. 10.

[20] See Ayer, 5 S.T.B. at 512 (explaining that a railroad's voluntary agreements may be an exception to § 10501(b) preemption); Twp. of Woodbridge, N.J. v. Consol. Rail Corp. (Woodbridge 2000), NOR 42053, slip op. at 4-5 (STB served Dec. 1, 2000), clarified in decision served March 23, 2001(Woodbridge 2001) (same).

procedures during the environmental review for the Line is not controlling. As the Authority explains, CEQA compliance for the HST System began prior to the Board's assertion of jurisdiction over the project. Following issuance of the HST System Jurisdiction Decision in April 2013, the Authority has consistently stated in its environmental documentation that it reserves the right to assert federal preemption in response to any potential legal challenge to its CEQA compliance.[21] Thus, to the extent any implied agreement existed, the Authority expressly modified that agreement once the Board asserted jurisdiction.

Even assuming arguendo that the Authority's previous CEQA compliance created an implied agreement, the Board concludes that any such agreement unreasonably interferes with interstate commerce and is not enforceable under § 10501(b). As the Board has explained, a railroad's agreements with state or local entities may be preempted by § 10501(b) if the agreement unreasonably interferes with interstate commerce or railroad operations. Woodbridge 2000, slip op. at 4-5; Woodbridge 2001, slip op. at 3.[22] See Blanchard Sec. Co. v. Rahway Valley R.R., 191 F. App'x 98, 100 (3d Cir. 2006) (unpublished) (following Woodbridge 2000). Here, the Board's jurisdiction extends to the Line because, as we have found, the Line would be constructed and operated as part of the interstate rail network. Merced-to-Fresno, slip op. at 11-15. Moreover, the Board specifically authorized the construction of the Line after a review of the environmental impacts under NEPA and the transportation merits of the project. Fresno-to-Bakersfield, slip op. at 12-21. The Line nevertheless is now the subject of seven CEQA enforcement suits in California state court that could block or significantly delay the Authority's right to proceed with the project. We believe that this conflict with our jurisdiction runs contrary to Congress's intent. In particular, we conclude that any implied agreement to comply with CEQA that potentially could have the effect, through the mechanism of a third-party enforcement suit, of prohibiting the construction of a rail line authorized by the Board unreasonably interferes with interstate commerce by conflicting with our exclusive jurisdiction and by preventing the Authority from exercising the authority we have granted it. See Blanchard, 191 F. App'x at 100 (finding state law claims seeking enforcement of contract with railroad preempted because they would interfere with the reactivation of a rail line). Therefore, to the extent the Authority's previous voluntary CEQA compliance created an implied contract,

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[21] See Pet. 10 n.8 (quoting Fresno-Bakersfield HST Segment Final EIR/EIS 1-4: "[c]ompleting the state environmental review process does not waive any preemption argument that may be available to the Authority in the event of a legal challenge"; and citing Palmdale-Burbank HST Segment Notice of Preparation, n.1, repeating that Authority reserved its right to assert preemption).

[22] The facts here are distinguishable from Woodbridge. In Woodbridge 2000, the Board found that a voluntary agreement between a railroad and a municipality in which the railroad agreed to limit certain nighttime operations was not preempted, because the railroad "ha[d] not shown that enforcement of its commitments would unreasonably interfere with the railroad's operations." Woodbridge 2000, slip op. at 5. The Board later clarified that decision by explaining that it did not preclude the railroad from arguing in subsequent proceedings that the agreement did interfere with interstate commerce. Woodbridge 2001, slip op. at 3.

the Board concludes that any such agreement is preempted under § 10501(b) because of its impact on interstate commerce.

Opponents rely on the California Court of Appeal's decision in Atherton, which previously found that CEQA is not preempted by § 10501(b) with regard to construction of the HST System. However, to the extent our analysis above conflicts with that decision, we respectfully disagree with the court's analysis.

First, the Atherton court did not directly decide, see 175 Cal. Rptr. 3d at 161-62, whether CEQA qualified as a state permitting or preclearance requirement "that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that [the Board] has authorized." Id. at 159-60. However, to the extent Atherton can be read to suggest that CEQA is not a preclearance requirement, the court's analysis, in our view, is incorrect. Consistent with our prior decisions such as DesertXpress, we conclude here that CEQA is a state preclearance requirement because the environmental review process under CEQA can be used under state law, through an enforcement proceeding, to block a Board-authorized rail construction project. Indeed, another California Court of Appeal in Eel River, 178 Cal. Rptr. 3d at 769-70, recently explained that the environmental review process under CEQA, though it serves a laudable and important purpose, qualifies as a state preclearance requirement that "could significantly delay or even halt a project in some circumstances," and therefore is categorically preempted.

Moreover, the court in Atherton failed to acknowledge another reason why CEQA is categorically preempted by § 10501(b): that because environmental review under CEQA attempts to regulate where, how, and under what conditions the Authority may construct the Line, the application of CEQA here would constitute an attempt by a state to regulate a matter directly regulated by the Board – the construction of a new rail line as part of the interstate rail network. See CSX Transp., Inc.—Pet. for Declaratory Order, slip op. at 3 (§ 10501(b) categorically preempts any "state or local regulation of matters directly regulated by the Board – such as the construction, operation, and abandonment of rail lines"); Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 410-11 (5th Cir. 2010); Adrian & Blissfield R.R., 550 F.3d at 539-40.

Ultimately, the Atherton court appears to have assumed that CEQA was indeed preempted, but then held that an exception to federal preemption – the market participation doctrine – applied to block any preemption of CEQA in this particular case. See 175 Cal. Rptr. 3d at 162-68. However, we agree with the Eel River court that the market participation doctrine does not apply in the context of a CEQA enforcement suit for a railroad project under our jurisdiction and that, consequently, the Atherton court incorrectly applied it to bar federal preemption of CEQA. Eel River, 178 Cal. Rptr. 3d at 774-78.

As both the Atherton and Eel River courts explain, the market participation doctrine shields state action from federal preemption where the state's action is proprietary in nature and not regulatory – i.e., the state is acting as a participant in the marketplace and not as a regulator. See Eel River, 178 Cal Rptr. 3d at 774-76 ("[T]he market participation doctrine gives governmental entities the freedom to engage in conduct that would be allowed to private market participants. It accomplishes this end by allowing the governmental entity to avoid a charge by

aggrieved third parties that its actions are preempted by federal law.") (citations omitted); Atherton, 175 Cal. Rptr. 3d at 163-64. The Atherton court held that the market participation doctrine barred preemption under § 10501(b) because it found that the Authority's HST project, and its related CEQA compliance, was proprietary in nature and that the Authority was not acting as a regulator. See 175 Cal. Rptr. 3d at 164-68. However, as the Eel River court explained, even if a state agency's action can be viewed as "'proprietary' and the initial decision to prepare the EIR a component of this proprietary action, a writ proceeding by a private citizen's group challenging the adequacy of the review under CEQA is not part of this proprietary action." 178 Cal Rptr. 3d at 776. Indeed, when a state invokes the market participation doctrine, it usually does so *"defensively"* to protect its actions from federal preemption. Id. (emphasis in original). However, when bringing a CEQA enforcement suit, "[p]etitioners seek to stand the market participation doctrine on its head and use it to avoid the preemptive effect of a federal statute the state entity is seeking to invoke." Id. As the Eel River court noted, "[n]one of the cases involving market participation use the doctrine in this context, and such a use would be antithetical to the purpose underlying the doctrine." Id. Thus, we agree with the Eel River court's conclusion that "[t]he aspect of CEQA that allows a citizen's group to challenge the adequacy of an EIR when CEQA compliance is required is clearly regulatory in nature, as a lawsuit against a governmental entity cannot be viewed as part of its proprietary action, even if the lawsuit challenges that proprietary action." Id.[23]

In addition, in the context of applying the market participation doctrine, the Atherton court relied upon the alleged requirements of California's Proposition 1A (the bond measure that provides funding for the HST System) and the Authority's subsequent voluntary attempted compliance with CEQA to demonstrate that the Authority was acting as a market participant. See 175 Cal. Rptr. 3d at 165-67. While the Board will not attempt to interpret the requirements of Proposition 1A, as that is for a state court to decide, we do not believe the actions that the

[23] Opponents cite to numerous market participation doctrine cases, almost all of which are discussed in both the Atherton and Eel River decisions. None of these cases support Opponents' arguments because, as the Eel River court explained, they all involved situations where the state or municipality used the market participation doctrine defensively to shield its actions in procuring goods and services from federal preemption. See, e.g., Transportation Groups Reply 11-22, citing Bldg. & Constr. Trades Council v. Associated Builders & Contractors, 507 U.S. 218 (1993); Johnson v. Rancho Santiago Cmty. Coll., 623 F.3d 1011 (9th Cir. 2010); Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 498 F.3d 1031 (9th Cir. 2007); Tocher v. City of Santa Ana, 219 F.3d 1040 (9th Cir. 2000), abrogated in part by City of Columbus v. Ours Garage & Wrecker Serv., Inc., 536 U.S. 424 (2002); Cardinal Towing & Auto Repair, Inc. v. City of Bedford, 180 F.3d 686 (5th Cir. 1999). In this case, the relevant regulatory actions are not the procurement of goods or services for the Line, but rather the third-party enforcement suits filed against the Authority. Indeed, this case is analogous to the so-called Grupp cases discussed in Eel River, in which the courts held that when a third party "relies on a state law of general application to challenge a state proprietary action, that challenge operates as a regulation, rather than a part of the proprietary action being challenged." 178 Cal. Rptr. 3d at 776-77.

Authority has taken under Proposition 1A and CEQA are the relevant actions for purposes of determining whether the market participation exception to preemption should apply. As noted above, the relevant question under the market participation doctrine is whether a third-party enforcement action under CEQA constitutes state proprietary or regulatory action. As the Eel River court explained, such an action is a regulatory, not a proprietary action.[24]

State sovereignty. Finally, Opponents argue that any preemption of CEQA here would infringe upon California's state sovereignty by interfering with the state's right to dictate how its own agency (the Authority) must proceed when building a state project.[25] Opponents assert that Proposition 1A requires the Authority to comply with CEQA as a condition of obtaining and using Proposition 1A funding to construct the HST.[26] However, as we have noted, the relevant regulatory actions for purposes of our preemption analysis here are the third-party CEQA enforcement suits, not the state law that authorized funding for the HST System. Our analysis indicating that § 10501(b) preempts third-party attempts to enforce CEQA against a state agency does not infringe upon California's state sovereignty because the CEQA enforcement actions are not being brought by the state. Rather, the enforcement actions in state court are being brought by third parties against a state agency under the guise of state law.

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[24] Opponents, like the Atherton court, suggest that the relevant action for purposes of determining preemption here consists of the Authority's internal approvals related to the HST project and voluntary attempted compliance with CEQA. Transportation Groups Reply 11-22. Opponents suggest that preemption only applies where there is an "external" attempt to regulate a rail carrier. See, e.g., id. at 21-22 (characterizing the N. San Diego and Eel River cases as involving "external" attempts to regulate). We do not need to decide whether Opponents' internal/external distinction is controlling, however, because the relevant actions here are indeed "external" attempts to regulate a project, under the Opponents' own definition of "external." The relevant regulatory actions here are the "external" third-party CEQA enforcement suits being brought against the Authority – not any internal decisions the Authority has made. Such lawsuits can regulate rail transportation just as effectively as a state statute or regulation. See Maynard v. CSX Transp., Inc., 360 F. Supp. 2d 836, 840 (E.D. Ky. 2004) (explaining that common law suits constitute regulation); Guckenberg v. Wis. Cent. Ltd., 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (same) (citing and quoting Cipollone v. Liggett Group, Inc., 505 U.S. 504, 521 (1992)). In addition, Opponents suggest that attempted regulation of state rail agencies like the Authority should be treated differently than local rail agencies under § 10501(b), or that only regulatory actions against private railroads are subject to preemption. See Transportation Groups Reply 21-22, 28. However, no such distinctions exist in the case law applying § 10501(b). See, e.g., Eel River, 178 Cal. Rptr. 3d at 760 (attempt to regulate activities of local rail carrier preempted); N. San Diego, slip op. at 1-2, 7 (same); Ala. R.R., slip op. at 5 (state railroad's construction of new rail line under Board's exclusive jurisdiction). See also California v. Taylor, 353 U.S. 553, 561-68 (1957) (state owned railroads generally subject to federal rail regulation in the same manner as private railroads).

[25] See Transportation Groups Reply 23-29; CEQA Litigants Reply 4.

[26] See Transportation Groups Reply 23-29.

In addition, as we have noted, we do not opine here on whether Proposition 1A requires the Authority to comply with CEQA as a condition of its funding. Whether CEQA compliance is required before the Authority is allowed to obtain or use Proposition 1A funding is a question of state law for a state court to decide. Fresno-to-Bakersfield, slip op. at 11 ("[I]t is not our role to determine whether the Authority has complied with state or Federal funding requirements. That is an issue to be decided by the appropriate courts."); Cf. Nixon v. Mo. Mun. League, 541 U.S. 125, 134-37 (2004) (explaining that even if a federal statute were to preempt a state requirement directed at a state agency, the state legislature still has the authority to control the funding of the state agency and implicitly the state agency's actions).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Authority's petition for declaratory order is granted to the extent discussed above.

2. The motions to intervene are granted, and the late-filed comments of Senator Vidak; U.S. Representatives Valadao, Denham, McCarthy, and Nunes; and MEL's Farms are accepted into the record.

3. The Authority's motion for leave to file a reply is denied. Transportation Groups' opposition to motion for leave to reply or, in the alternative, motion for leave to file surreply is denied as moot.

4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Commissioner Begeman dissented with a separate expression.

COMMISSIONER BEGEMAN, dissenting:

Since the Authority first came to the Board in March 2013, the majority's main focus has been on getting out of the Authority's way instead of providing much needed review and oversight (which could have occurred during the Board's construction application process) and ensuring that conflicts with stakeholders (e.g., freight carriers, Mercy Hospital) would be resolved. Although the majority's unobtrusive posture continues, today's overreaching order also clears the citizens of the State of California from the Authority's path. Just as I could not support the majority's prior oversight avoidance, I cannot support moving a significant piece of the Authority's decision-making beyond the reach of the people whose interests the Authority purportedly serves.

It is well established that the Authority and the Federal Railroad Administration (FRA) have worked together on a number of joint environmental reviews of the HST System. During these reviews, "the Authority served as the lead state agency for compliance with the California

Environmental Quality Act (CEQA), and FRA and the Authority served as co-leads for compliance with NEPA. These joint reviews have produced single environmental documents titled "environmental impact reports/environmental impact statements" (EIR/EIS) to meet the obligations of both CEQA and NEPA, respectively."[1] In approving the two segments over my objections, the Board twice adopted such joint documents, including numerous CEQA mitigation provisions.

If the Authority was interested in foregoing its CEQA commitments under the guise of federal preemption, it could have revised either of the two EIR/EISs prior to the Board's adoption of them. After all, the Board claimed jurisdiction over the project in advance of issuing a final decision (including the adoption of the joint environmental documents) to approve construction of the first section in June 2013. But the Authority took no such action on either segment. The Board adopted both of the joint environmental documents, arguably making the Authority fully accountable for both CEQA and NEPA mitigation.

The Authority has not asked the Board to shield it entirely against California's environmental laws (which may have to do with the conditioning of the November 2008 bond measure supporting the Project on CEQA compliance). The petition for declaratory order instead states that the Authority "completed the CEQA process when it completed and certified the EIR . . . for the Fresno-Bakersfield HST Segment in May of 2014" and thus "does not seek declaratory relief regarding non-injunctive remedies, such as an order requiring revised environmental analyses or additional environmental mitigation . . . ."

Yet the majority has decided to go even further than the Authority requested by finding that CEQA is "categorically preempted." In other words, there is now no means of enforcing CEQA with respect to the Project. Authority claims of CEQA compliance will be merely claims, and deviations from any of the CEQA provisions included in the Board's own-approved EIR/EISs will not be challengeable.

Ironically, today's ruling could have unintended consequences for the long-term prospects of the Project. Although the majority claims that its decision does not implicate the bonding monies, those claims certainly bind no one in the State of California. The majority's decision to remove this element of compliance oversight for the Authority may instead serve only to spur further litigation.

It is within the Board's discretion to issue a declaratory order and it should decline to do so here.[2] The Authority has come before the Board many times asserting its commitment to both CEQA and NEPA. This agency has adopted that commitment into its orders and many

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[1] See, e.g., Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal., FD 35724 (Sub-No. 1), slip op. at 2 n.3 (STB served Aug. 12, 2014).

[2] See 5 U.S.C. § 554(e); 49 U.S.C. § 721 (the Board has the discretion to grant or decline petitions for declaratory order).

stakeholders have relied on the Authority's representations over the years. The Authority should live up to its commitments and the Board should refrain from undermining them.

I dissent.

Exhibit B

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EB

SERVICE DATE – MAY 5, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35861

CALIFORNIA HIGH-SPEED RAIL AUTHORITY—PETITION FOR DECLARATORY ORDER

Digest:[1] Petitions for reconsideration of a December 12, 2014 declaratory order in this proceeding and a motion for stay of that order were filed. The Board is unable to reach a majority decision regarding these filings. Accordingly, the petitions for reconsideration and motion for stay cannot be granted.

Decided: May 4, 2015

Petitions requesting reconsideration of California High-Speed Rail Authority—Petition for Declaratory Order (December Decision), FD 35861 (STB served Dec. 12, 2014) and a motion for stay of that decision were filed. In the December Decision, the Board (with Vice Chairman Begeman dissenting) issued a declaratory order under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 regarding the application of federal preemption of the California Environmental Quality Act (CEQA) to the construction of a high-speed passenger line between Fresno and Bakersfield, Cal. (the Line). The Board is unable to reach a majority decision regarding the petitions for reconsideration and the motion for stay. Accordingly, the requests for reconsideration and a stay cannot be granted. A procedural history follows.

On October 9, 2014, the California High-Speed Rail Authority (Authority) filed a petition requesting that the Board issue a declaratory order regarding the availability of injunctive remedies under CEQA to prevent or delay construction of the Line. Following institution of a proceeding to consider the issues raised in the Authority's petition and an opportunity for interested parties to file replies, the Board issued the December Decision, providing its opinion that 49 U.S.C § 10501(b) preempts application of CEQA to the construction of the Line.

On December 29, 2014, the Community Coalition on High-Speed Rail (CC-HSR), Transportation Solutions Defense and Education Fund (TRANSDEF), California Rail Foundation (CRF), the Counties of Kings and Kern, the City of Shafter, Citizens for High Speed Rail Accountability (CHSRA), Kings County Farm Bureau, Dignity Health, and First Free Will

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Baptist Church of Bakersfield (collectively, Group Petitioners) filed a petition (the Group Petition)[2] asking that the Board reconsider the December Decision. On December 30, 2014, Jacqueline Ayer (Ayer) also filed a petition for reconsideration (the Ayer Petition). The Authority responded in opposition to the petitions for reconsideration on January 20, 2015. On February 19, 2015, CHSRA, CC-HSR, TRANSDEF, CRF, the Counties of Kern and Kings, the Kings County Farm Bureau, and Dignity Health (collectively, Stay Petitioners)[3] filed a motion to stay the December Decision pending the Board's decision on reconsideration and judicial review by the federal court of appeals. The Authority replied in opposition to that motion on February 24, 2015.

Group Petitioners ask that the Board reconsider the December Decision and decline to issue a declaratory order. They argue that (1) Town of Atherton v. California High-Speed Rail Authority (Atherton), 175 Cal. Rptr. 3d 145 (Ct. App. 2014), controls the question of preemption of CEQA for the Line, (2) application of CEQA here does not interfere with the Board's jurisdiction and preemption defeats important state interests, (3) third-party enforcement is a key component of CEQA and should not be preempted, (4) application of the National Environmental Policy Act (NEPA) should not displace CEQA, (5) preemption here impinges on state sovereignty in violation of the Supremacy Clause, (6) § 10501(b) is not intended to preempt state police powers to protect the health and safety of its citizens, and (7) the Board's decision could cause a decline in state-sponsored railways.

The Ayer Petition asserts that the Board should reconsider the December Decision and deny the Authority's request for a declaratory order because the December Decision is internally inconsistent. The Ayer Petition also claims that (1) § 10501(b) does not preempt CEQA compliance imposed by Proposition 1A because the Board does not have jurisdiction over state funding statutes, (2) the Board's statements supporting its conclusion that the December Decision does not impinge on state sovereignty are contradictory, and (3) the Board should have relied on the preemption analysis in Atherton, but not on Friends of the Eel River v. North Coast Railroad Authority (Eel River), 178 Cal. Rptr. 3d 752 (Ct. App. 2014).[4]

In its reply to the petitions, the Authority argues that Ayer and Group Petitioners have not met the Board's standard for reconsideration. The Authority further asserts that (1) the December Decision is not internally inconsistent, (2) the Board properly relied on existing court and Board precedent in concluding that state and local environmental preclearance requirements are preempted, (3) the Board was not required to defer to the interpretation of the federal preemption provision in the Interstate Commerce Act by a state court in Atherton, and (4) the

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[2] Coffee-Brimhall LLC was one of the filers of the Group Petition, but on April 9, 2015, it withdrew as a party from the proceeding.

[3] Stay Petitioners include most of the Group Petitioners. Coffee-Brimhall LLC was one of the Stay Petitioners until it withdrew from the proceeding on April 9, 2015.

[4] Eel River and Atherton are California state appellate court cases that came to opposite conclusions regarding the scope of federal preemption of CEQA.

Board was well within its discretion in deciding to issue a declaratory order to provide guidance to interested parties and the California Supreme Court that will hear an appeal of Eel River and presumably resolve the conflict between that decision and Atherton.

In the motion for a stay, Stay Petitioners claim that the Authority intends to cite the December Decision as grounds for dismissal of the state court litigation concerning the Authority's compliance with CEQA. Stay Petitioners argue that a stay of the December Decision meets the Board's standards for granting a stay. The Authority replies that the motion was untimely and does not meet the standards for a stay.

We have considered the record before us but are unable to reach a majority decision. Accordingly, the Group Petition, the Ayer Petition, and the motion for stay cannot be granted.

It is ordered:

1. The Group Petition, the Ayer Petition, and the motion for stay of the December Decision cannot be granted, as the Board was unable to reach a majority decision.

2. This proceeding is terminated.

3. This decision is effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman. Acting Chairman Miller and Vice Chairman Begeman commented with separate expressions.

ACTING CHAIRMAN MILLER, commenting:

After reviewing the record, I conclude that the petitioners have raised no basis for reconsidering the December Decision. I also believe it would be appropriate to deny the motion for stay of that declaratory order.

Petitions for Reconsideration. A party may seek reconsideration of a Board decision by submitting a timely petition that (1) presents new evidence or substantially changed circumstances that would materially affect the Board's decision, or (2) demonstrates material error in the prior decision. 49 U.S.C. § 722(c); 49 C.F.R. § 1115.3; see also W. Fuels Ass'n v. BNSF Ry., NOR 42088, slip op. at 2 (STB served Feb. 29, 2008). Where, as here, a petition alleges material error, a party must do more than simply make a general allegation; it must substantiate its claim of material error. See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R., FD 35081, slip op. at 4 (STB served May 7, 2009) (denying petition for reconsideration where petitioner did not substantiate its claim of material error, but merely restated arguments previously made and cited evidence previously submitted). Because I find no material error in the Board's prior analysis and no new evidence or changed circumstances are alleged, I believe the petitions for reconsideration should be denied.

Review of the December Decision shows that the decision itself addresses the arguments for reconsideration and refutes the claims of error. In the December Decision, slip op. at 8, the Board explained the longstanding precedent that state and local permitting or preclearance requirements are categorically preempted as to the construction and operation of rail lines and facilities within the Board's jurisdiction. The December Decision further explained the difference between preclearance or permitting requirements and localities' reserved police powers to protect the health and safety of their citizens, which are not preempted unless state and local regulation unreasonably burdens interstate commerce. Id. at 9. Based on this precedent, the Board concluded that the application of CEQA to the Line falls squarely within these categorically preempted state preclearance or permitting requirements. Id. at 10.

Contrary to the claims made by petitioners, preemption of CEQA as applied to the Line is also entirely consistent with Board precedent. As the Board explained, the correct analysis of 49 U.S.C. § 10501(b) and congressional intent of that provision is that application of CEQA through third-party enforcement suits would conflict with the Board's jurisdiction and could potentially block or significantly delay the construction of a rail line authorized by the Board. December Decision, slip op. at 10-11. As a result, § 10501(b) preempts application of CEQA for the Line, id., and it is only the environmental review conducted at the federal level pursuant to NEPA that need be applied to the Line. This is entirely consistent with Board precedent. Id. at 10, 12. Therefore, the claims that the December Decision is contrary to Board precedent are without basis.

Both petitions allege that the Board incorrectly relied on the Eel River decision and that it should have relied on Atherton. The Board, however, relied on neither decision as binding or precedential authority. Instead, the Board analyzed the applicable federal law and explained why the Board agreed with the interpretation of federal law stated in Eel River and how, in its view, the analysis in Atherton was incorrect. December Decision, slip op. at 12-14.

The arguments regarding interference with state funding law and state sovereignty are similarly incorrect and mischaracterize the Board's decision. The interpretation of Proposition 1A is a matter of state law that the Board explicitly left to the California state courts. Id. at 13, 15. Contrary to the claims, therefore, the Board's decision does not preempt the application of CEQA as a possible condition of receiving Proposition 1A funding. Rather, the December Decision, slip op. at 14-15, explains that § 10501(b) preempts third-party lawsuits to enforce CEQA against a state entity that could interfere with the construction authority the Board has granted for the Line. The question of whether CEQA compliance could still be required if Proposition 1A funds are used is not addressed in the December Decision. Id. at 15. Moreover, because the preemption issue raised in this declaratory order proceeding relates to third-party enforcement suits against a state entity and not enforcement actions being brought by the state itself, the Board's conclusion that § 10501(b) preempts CEQA for the Line does not impinge on state sovereignty, as the December Decision properly found. See id. at 14.

In addition to the arguments explicitly discussed here, I considered all of the remaining arguments raised in the two petitions and conclude that neither petition establishes a material error, nor do the petitioners allege new evidence or substantially changed circumstances that

would materially affect the Board's December Decision. Accordingly, I find no basis for granting either of the petitions for reconsideration.

Motion for stay. As a threshold matter, the motion for a stay is untimely. Board rules require that such a filing be made within 10 days of service of the relevant action. 49 C.F.R. § 1115.3(f). The relevant action was issued on December 12, 2014, and, therefore, any request for a stay of that decision should have been filed by December 22, 2014. Stay Petitioners filed their motion on February 19, 2015, nearly two full months after the deadline and without explanation of why they could not have filed in a timely manner.

In addition, Stay Petitioners have failed to demonstrate that a stay is warranted. The Board requires a party seeking a stay to establish that: (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of the stay. Eighteen Thirty Group, LLC—Acquis. Exemption—In Allegany County, Md., FD 35438 et al., slip op. at 2 (STB served Nov. 17, 2010). Stay Petitioners claim that denial of their motion would irreparably harm them because a stay is necessary to prevent dismissal of Stay Petitioners' California state court litigation concerning the Authority's compliance with CEQA.[1] The December Decision, however, was issued to "assist in the resolution of the conflict between Atherton and Eel River on federal preemption of CEQA." December Decision, slip op. at 5. The Board expressly stated that it was providing its interpretation of its governing statute "[b]ecause of the[] conflicting [state court] opinions regarding CEQA preemption and because the Board is 'uniquely qualified' to determine the preemption question." Id. at 7. The December Decision does not require dismissal of any litigation pending in the California courts. The fact that dismissal based on the December Decision *may* be sought and dismissal *may* be granted does not establish irreparable harm. A dismissal is merely one possible outcome. Moreover, even if the California court dismissed the cases based on the December Decision, Stay Petitioners would be able to appeal that dismissal and, thus, would have a remedy available to them. Therefore, Stay Petitioners have not shown that they would suffer irreparable harm absent a stay.

I believe that Stay Petitioners have also failed to show a likelihood that they will prevail on the merits of any challenge to the December Decision. As explained above, my views on preemption are consistent with precedent and there is no interference with state sovereignty or state funding.

Because I find that Stay Petitioners have not established either irreparable harm or a likelihood of success on the merits, the remaining stay criteria need not be addressed. See Eighteen Thirty Group, LLC—In Allegany County, Md., FD 35438 et al., slip op. at 3 (describing irreparable harm as "the threshold consideration" for a grant of injunctive relief); see

[1] The motion for stay states that several of Stay Petitioners have state court litigation pending against the Authority relating to the application of CEQA. The motion also states that there are multiple suits in one court and that Stay Petitioners anticipate that the Authority will file a motion to dismiss those suits in that court. Stay Mot. at 4.

also Denver & Rio Grande Ry. Historical Found.—Pet. for Declaratory Order, FD 35496, slip op. at 2-3 (STB served Sept. 12, 2014) (denying petition for a stay due to petitioner's failure to show irreparable harm without discussing remaining three criteria for a stay); Ballard Terminal R.R., LLC—Lease Exemption—Line of Eastside Cmty. Rail, LLC, FD 35730, slip op. at 2 (STB served May 1, 2013) (denying petition for a stay due to petitioner's failure to show irreparable harm). Therefore, I believe that the motion for a stay should be denied.

VICE CHAIRMAN BEGEMAN, commenting:

It is no surprise that a majority decision was not reached to reverse course on the December Decision, which I opposed. I supported granting the petitions for reconsideration and motion for stay. Such actions would have enabled the Board to follow its own precedent while allowing the Authority to answer whether it will truly live up to commitments.[1]

As I noted in my dissent accompanying the December Decision, it is well within the Board's discretion to issue a declaratory order.[2] Even if the Authority had actually sought the "categorical preemption" the Board gratuitously granted, the Board should have opted to leave that decision to the courts.[3] The Board was well aware that questions of preemption were already in the state courts and that no court sought the Board's input on those questions. As such, the Board should not have interfered with those proceedings just to make a questionable finding that no one even sought.

[1] The Authority has come before the Board many times asserting its commitment to both CEQA and NEPA. This agency has adopted that commitment into its orders and many stakeholders have relied on the Authority's representations over the years.

[2] See, e.g., 5 U.S.C. § 554(e); 49 U.S.C. § 721 (the Board has the discretion to grant or decline petitions for declaratory order).

[3] It is well established that questions of federal preemption under 49 U.S.C. § 10501(b) can be decided by either the Board or the courts. See, e.g., 14500 Ltd.—Pet. for Declaratory Order, FD 35788, slip op. at 2 (STB served June 5, 2014).

CERTIFICATE OF SERVICE

I, Cynthia Kellman, hereby declare as follows:

I am a U.S. citizen; am over the age of 18 years and am not a party to the within action. My business address is 2200 Pacific Coast Highway, Suite 318, Hermosa Beach, CA 90254.

On June 11, 2015, I served the **PETITION FOR REVIEW** on the below parties to the proceedings before Respondent Surface Transportation Board by placing true copies thereof in sealed envelopes, addressed as shown, for collection and mailing during regular business hours and by placing a true copy with first-class U.S. postage, fully paid, in the U.S. mail at Hermosa Beach, California, or as specifically noted below, to the persons listed below:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at Hermosa Beach, California on June 11, 2015.

s/ Cynthia Kellman
Chatten-Brown & Carstens LLP

UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT

Office of the Clerk

After Opening a Case – Counseled Non-Immigration Agency Cases

(revised January 2015)

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Calendar Unit	(415) 355-8190
Docketing	(415) 355-7840
Death Penalty	(415) 355-8197
Electronic Filing – CM/ECF	Submit form at http://www.ca9.uscourts.gov/cmecf/feedback
Library	(415) 355-8650
Mediation Unit	(415) 355-7900
Motions Attorney Unit	(415) 355-8020
Procedural Motions Unit	(415) 355-7860
Records Unit	(415) 355-7820
Divisional Court Offices:	
Pasadena	(626) 229-7250
Portland	(503) 833-5300
Seattle	(206) 224-2200

Electronic Filing - CM/ECF

The Ninth Circuit's CM/ECF (Case Management/Electronic Case Files) system is mandatory for all attorneys filing in this Court, unless they are granted an exemption. All non-exempted attorneys who appear in an ongoing case are required to register for and to use CM/ECF. Registration and information about CM/ECF is available on the Court's website at www.ca9.uscourts.gov under *Electronic Filing–CM/ECF.* Read the Circuit Rules, especially Ninth Circuit Rule 25-5, for guidance on CM/ECF, including which documents can and cannot be filed electronically.

Rules of Practice

The Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.) and the General Orders govern practice before this Court. The rules are available on the Court's website at www.ca9.uscourts.gov under *Rules.*

Practice Resources

The Appellate Lawyer Representatives' Guide to Practice in the United States Court of Appeals for the Ninth Circuit is available on the Court's website www.ca9.uscourts.gov at *Guides and Legal Outlines* > *Appellate Practice Guide.* The Court provides other resources in *Guides and Legal Outlines.*

Admission to the Bar of the Ninth Circuit

All attorneys practicing before the Court must be admitted to the Bar of the Ninth Circuit. Fed. R. App. P. 46(a); 9th Cir. R. 46-1.1 & 46-1.2.

For instructions on how to apply for bar admission, go to www.ca9.uscourts.gov and click on the *Attorneys* tab > *Attorney Admissions* > *Instructions.*

Notice of Change of Address

Counsel who are registered for CM/ECF must update their personal information, including street addresses and email addresses, online at: https://pacer.psc.uscourts.gov/pscof/login.jsf 9th Cir. R. 46-3.

Counsel who have been granted an exemption from using CM/ECF must file a written change of address with the Court. 9th Cir. R. 46-3.

Payment of Fees

The $500.00 filing fee or a motion to proceed in forma pauperis shall accompany the petition. 9th Cir. R. 3-1.

A motion to proceed in forma pauperis must be supported by the affidavit of indigency found at Form 4 of the Federal Rules of Appellate Procedure, available at the Court's website, www.ca9.uscourts.gov, under *Forms.*

Failure to satisfy the fee requirement or to apply to proceed without payment of fees will result in the petition's dismissal. 9th Cir. R. 42-1.

Motions Practice

Following are some of the basic points of motion practice, governed by Fed. R. App. P. 27 and 9th Cir. R. 27-1 through 27-14.

- Neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C)(ii), (iii).
- Motions may be supported by an affidavit or declaration. 28 U.S.C. § 1746.
- Each motion should provide the position of the opposing party. Circuit Advisory Committee Note to Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).
- A response to a motion is due 10 days from the service of the motion. Fed. R. App. P. 27(a)(3)(A). The reply is due 7 days from service of the response. Fed. R. App. P. 27(a)(4); Fed. R. App. P. 26(c).
- A response requesting affirmative relief must include that request in the caption. Fed. R. App. P. 27(a)(3)(B).
- A motion filed after a case has been scheduled for oral argument, has been argued, is under submission or has been decided by a panel, must include on the initial page and/or cover the date of argument, submission or decision and, if known, the names of the judges on the panel. 9th Cir. R. 25-4.

Emergency or Urgent Motions

All emergency and urgent motions must conform with the provisions of 9th Cir. R. 27-3. Note that a motion requesting procedural relief (e.g., an extension of time to file a brief) is *not* the type of matter contemplated by 9th Cir. R. 27-3. Circuit Advisory Committee Note to 27-3(3).

Prior to filing an emergency motion, the moving party *must* contact an attorney in the Motions Unit in San Francisco at (415) 355-8020.

When it is absolutely necessary to notify the Court of an emergency outside of standard office hours, the moving party shall call (415) 355-8000. Keep in mind that this line is for true emergencies that cannot wait until the next business day (e.g., an imminent execution or removal from the United States).

Briefing Schedule

The Court sets the briefing schedule at the time the petition is docketed.

Certain motions (e.g., a motion for dismissal) automatically stay the briefing schedule. 9th Cir. R. 27-11.

The opening and answering brief due dates are not subject to the additional time described in Fed. R. App. P. 26(c). 9th Cir. R. 31-2.1. The early filing of petitioner's opening brief does not advance the due date for respondent's answering brief. *Id.*

Extensions of Time to file a Brief

Streamlined Request
Subject to the conditions described at 9th Cir. R. 31-2.2(a), you may request one streamlined extension of up to 30 days from the brief's existing due date. Submit your request via CM/ECF using the "File Streamlined Request to Extend Time to File Brief" event on or before your brief's existing due date. No form or written motion is required.

Written Extension
Requests for extensions of more than 30 days will be granted only upon a written motion supported by a showing of diligence and substantial need. This motion shall be filed at least 7 days before the due date for the brief. The motion shall be accompanied by an affidavit or declaration that includes all of the information listed at 9th Cir. R. 31-2.2(b).

The Court will ordinarily adjust the schedule in response to an initial motion. Circuit Advisory Committee Note to Rule 31-2.2. The Court expects that the brief will be filed within the requested period of time. *Id.*

Contents of Briefs and Record

The required components of a brief are set out at Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1 and 32-2.

The content and filing of the record are governed by Fed. R. App. P. 16(a) and 17. If respondent does not file the record or certified list by the specified date, petitioner may move to amend the briefing schedule.

Excerpts of Record

The Court requires Excerpts of Record rather than an Appendix. 9th Cir. R. 30-1.1. Please review 9th Cir. R. 17-1.3 through 17-1.6 to see a list of the specific contents and format. For Excerpts that exceed 75 pages, the first volume must comply with 9th Cir. R. 17-1.6 and 30-1.6(a). Excerpts exceeding 300 pages must be filed in multiple volumes. 9th Cir. R. 30-1.6(a).

Respondent may file supplemental Excerpts, and petitioner may file further Excerpts. 9th Cir. R. 17-1.7; 17-1.8; 30-1.7 and 30-1.8. If you are a respondent responding to a pro se brief that did not come with Excerpts, then your Excerpts need only include the contents set out at 9th Cir. R. 30-1.7.

Excerpts must be submitted in PDF format on CM/ECF on the same day the filer submits the brief, unless the Excerpts contain sealed materials. If the Excerpts contain sealed materials, please electronically submit only the unsealed volumes. The filer shall serve a paper copy of the Excerpts on any party not registered for CM/ECF.

After electronic submission, the Court will direct the filer to file 4 separately-bound excerpts of record with white covers in paper copy.

Mediation Program

Mediation Questionnaires are required in all counseled, agency cases except those cases seeking review of a Board of Immigration Appeals decision. 9th Cir. R. 15-2.

The Mediation Questionnaire is available on the Court's website at www.ca9.uscourts.gov under *Forms*. The Mediation Questionnaire should be filed within 7 days of the docketing of the petition. The Mediation Questionnaire is used only to assess settlement potential.

If you are interested in requesting a conference with a mediator, you may call the Mediation Unit at (415) 355-7900, email ca09_mediation@ca9.uscourts.gov or make a written request to the Chief Circuit Mediator. You may request conferences confidentially. More information about the Court's mediation program is available at http://www.ca9.uscourts.gov/mediation.

Oral Hearings

Notices of the oral hearing calendars are distributed approximately 10 weeks before the hearing date.

The Court will change the date or location of an oral hearing only for good cause, and requests to continue a hearing filed within 14 days of the hearing will be granted only upon a showing of exceptional circumstances. 9th Cir. R. 34-2.

Oral hearing will be conducted in all cases unless all members of the panel agree that the decisional process would not be significantly aided by oral argument. Fed. R. App. P. 34(a)(2).

Ninth Circuit Appellate Lawyer Representatives
APPELLATE MENTORING PROGRAM

1. Purpose

The Appellate Mentoring Program is intended to provide mentoring on a voluntary basis to attorneys who are new to federal appellate practice or would benefit from guidance at the appellate level. In addition to general assistance regarding federal appellate practice, the project will provide special focus on two substantive areas of practice - immigration law and habeas corpus petitions. Mentors will be volunteers who have experience in immigration, habeas corpus, and/or appellate practice in general. The project is limited to counseled cases.

2. Coordination, recruitment of volunteer attorneys, disseminating information about the program, and requests for mentoring

Current or former Appellate Lawyer Representatives (ALRs) will serve as coordinators for the Appellate Mentoring Program. The coordinators will recruit volunteer attorneys with appellate expertise, particularly in the project's areas of focus, and will maintain a list of those volunteers. The coordinators will ask the volunteer attorneys to describe their particular strengths in terms of mentoring experience, substantive expertise, and appellate experience, and will maintain a record of this information as well.

The Court will include information about the Appellate Mentoring Program in the case opening materials sent to counsel and will post information about it on the Court's website. Where appropriate in specific cases, the Court may also suggest that counsel seek mentoring on a voluntary basis.

Counsel who desire mentoring should contact the court at mentoring@ca9.uscourts.gov, and staff will notify the program coordinators. The coordinators will match the counsel seeking mentoring with a mentor, taking into account the mentor's particular strengths.

3. The mentoring process

The extent of the mentor's guidance may vary depending on the nature of the case, the mentee's needs, and the mentor's availability. In general, the mentee should initiate contact with the mentor, and the mentee and mentor should determine together how best to proceed. For example, the areas of guidance may range from

basic questions about the mechanics of perfecting an appeal to more sophisticated matters such as effective research, how to access available resources, identification of issues, strategy, appellate motion practice, and feedback on writing.

4. Responsibility/liability statement

The mentee is solely responsible for handling the appeal and any other aspects of the client's case, including all decisions on whether to present an issue, how to present it in briefing and at oral argument, and how to counsel the client. By participating in the program, the mentee agrees that the mentor shall not be liable for any suggestions made. In all events, the mentee is deemed to waive and is estopped from asserting any claim for legal malpractice against the mentor.

The mentor's role is to provide guidance and feedback to the mentee. The mentor will not enter an appearance in the case and is not responsible for handling the case, including determining which issues to raise and how to present them and ensuring that the client is notified of proceedings in the case and receives appropriate counsel. The mentor accepts no professional liability for any advice given.

5. Confidentiality statement

The mentee alone will have contact with the client, and the mentee must maintain client confidences, as appropriate, with respect to non-public information.

United States Court of Appeals
for the Ninth Circuit

P.O. Box 31478
Billings, Montana 59107-1478

CHAMBERS OF
SIDNEY R. THOMAS
CHIEF JUDGE

December 1, 2014

TEL: (406) 373-3200
FAX: (406) 373-3250

Dear Counsel:

I want to take this opportunity to introduce you to the Court's mediation program. The court offers you and your clients professional mediation services, at no cost, to help resolve disputes quickly and efficiently and to explore the development of more satisfactory results than can be achieved from continued litigation. Each year the mediators facilitate the resolution of hundreds of cases, from the most basic contract and tort actions to the most complex cases involving multiple parties, numerous pieces of litigation and important issues of public policy.

The eight circuit mediators, all of whom work exclusively for the court, are highly experienced attorneys from a variety of practices; all have extensive training and experience in negotiation, appellate mediation, and Ninth Circuit practice and procedure. Although the mediators are court employees, the Court has adopted strict confidentiality rules and practices to ensure that what goes on in mediation stays in mediation. *See* Circuit Rule 33-1.

The first step in the mediation process is case selection. To assist the mediators in the case selection process, appellants/petitioners must file a completed Mediation Questionnaire within 7 days of the docketing of the case. *See* Circuit Rules 3-4, and 15-2. Appellees may also fill out and file a questionnaire. The questionnaire with filing instructions accompanies this letter and is also available at www.ca9.uscourts.gov/mediation/forms.php. All counsel are also invited to submit, by e-mail to ca09_mediation@ca9.uscourts.gov, additional, confidential information that might assist the mediators in the case selection process.

In most cases, the mediator will schedule a settlement assessment conference, with counsel only, to determine whether the case is suitable for mediation. Please be assured that participation in the mediation program will not slow down disposition of your appeal. Mediation discussions are not limited to the issues on appeal. The discussions can involve other cases and may include individuals who are not parties to the litigation, if doing so enables the parties to reach a global settlement.

Further information about the mediation program may be found on the court's website: www.ca9.uscourts.gov/mediation/. Please address questions directly to the Mediation Unit at 415-355-7900 or ca09mediation@ca9.uscourts.gov.

Our mediators do a terrific job. I hope you'll give them the opportunity to work on your case.

Sincerely,

Sidney R. Thomas

Sidney R. Thomas
Chief Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office
Phone (415) 355-7900 Fax (415) 355-8566
http://www.ca9.uscourts.gov/mediation

MEDIATION QUESTIONNAIRE

This form is available in a fillable version at *http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Mediation_Questionnaire.pdf*.

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are ***not*** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):

District Court/Agency Case Number(s):

District Court/Agency Location:

Case Name: v.

If District Court, docket entry number(s) of order(s) appealed from:

Name of party/parties submitting this form:

Briefly describe the dispute that gave rise to this lawsuit.

Briefly describe the result below and the main issues on appeal.

(Continue to next page)

Describe any proceedings remaining below or any related proceedings in other tribunals.

Provide any other thoughts you would like to bring to the attention of the mediator.

*Any party may provide additional information **in confidence** directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Provide the case name and Ninth Circuit case number in your message. Additional information might include level of interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.*

CERTIFICATION OF COUNSEL

I certify that:

☐ a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

☐ I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

How to File: Complete the form and then convert the filled-in form to a static PDF (File > Print > PDF Printer or any PDF Creator). To file, log into Appellate ECF and select File Mediation Questionnaire. (*Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system.)*

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

June 11, 2015

No.: 15-71780
Short Title: Kings County, et al v. STB, et al

Dear Petitioners/Counsel

Your Petition for Review has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

The due dates for filing the parties' briefs and otherwise perfecting the petition have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the petitioner to comply with the time schedule order will result in automatic dismissal of the petition. 9th Cir. R. 42-1.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 11 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KINGS COUNTY, a political subdivision of the State of California; KINGS COUNTY FARM BUREAU; CALIFORNIA CITIZENS FOR HIGH-SPEED RAIL ACCOUNTABILITY; COMMUNITY COALITION ON HIGH-SPEED RAIL; CALIFORNIA RAIL FOUNDATION, a California Nonprofit Corporation; TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California Nonprofit Corporation,

Petitioners,

v.

SURFACE TRANSPORTATION BOARD; UNITED STATES OF AMERICA,

Respondents.

No. 15-71780

STB No.
Surface Transportation Board

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Thu., June 18, 2015	Mediation Questionnaire due. If your registration for Appellate ECF is confirmed after this date, the Mediation Questionnaire is due within one day of receiving the email from PACER confirming your registration.

Mon., August 31, 2015	Petitioners' opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.
Tue., September 29, 2015	Respondents' answering brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1.

The optional petitioners' reply brief shall be filed and served within fourteen days of service of the respondents' brief, pursuant to FRAP 32 and 9th Cir. R. 32-1.

Failure of the petitioners to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court

Bradley Ybarreta
Deputy Clerk

EXHIBIT 6

ORIGINAL

FILED
ENDORSED
2016 OCT 18 PM 2:44
GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

Stuart M. Flashman (SBN 148396)
5626 Ocean View Dr.
Oakland, CA 94618-1533
Telephone/Fax: (510) 652-5373
e-mail: stu@stuflash.com

Attorney for Petitioner
Transportation Solutions Defense and Education Fund

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, Petitioner vs. CALIFORNIA AIR RESOURCES BOARD, an agency of the State of California, and DOES 1-10 inclusive, Respondents	No. 34-2014-80001974-CU-WM-GDS Action under the California Environmental Quality Act Assigned for all purposes to Hon. Shelleyanne W.L. Chang, Dept. 24 VERIFIED SECOND AMENDED PETITION FOR PEREMPTORY WRIT OF MANDATE
CALIFORNIA HIGH-SPEED RAIL AUTHORITY, an agency of the State of California, and DOES 11-20 inclusive, Real Parties In Interest	Action Filed: June 23, 2014

BY FAX

Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND. (hereinafter, "PETITIONER") hereby alleges as follows:

1. This action challenges the actions of Respondent CALIFORNIA AIR RESOURCES BOARD (hereinafter, "ARB") in approving the First Update to the Climate Change Scoping Plan (hereinafter, "PROJECT") and certifying the program-level Environmental Analysis ("EA") for said PROJECT.

2. PETITIONER alleges that ARB's actions violated provisions of the California Environmental Quality Act (Public Resources Code §21000 et seq., hereinafter referred to as "CEQA") and of the Global Warming Solutions Act of 2006 (Health & Safety Code §§38500 *et seq.*, hereinafter referred to as "AB 32"). More specifically, PETITIONER alleges that the EA for the PROJECT was inadequate in failing to identify, acknowledge, and analyze the significant

GHG emissions impacts of including Real Party in Interest California High-Speed Rail Authority's (hereinafter, "CHSRA") high-speed rail project (hereinafter, "HSR project") within the PROJECT as will be detailed hereinafter, that ARB violated the procedural requirements of CEQA, and that the PROJECT, and specifically the inclusion of the HSR project within the PROJECT, violated provisions of AB 32, as will be detailed hereinafter.

3. PETITIONER seeks this Court's peremptory writ of mandate ordering ARB to rescind its improper and illegal inclusion of the HSR project in the PROJECT and the associated sections of its supporting EA and requiring it to comply with CEQA and use proper criteria in any reconsideration of its approval of the HSR project's inclusion in the PROJECT. PETITIONER also asks that it be granted its reasonable attorneys' fees under Code of Civil Procedure §1021.5 or other applicable basis.

PARTIES

4. Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND is a California nonprofit corporation incorporated and existing under the laws of the State of California. PETITIONER's purposes include promoting and encouraging sustainable and environmentally responsible transportation policies and projects within the State of California.

5. PETITIONER and its members have a direct and beneficial interest in the proper compliance by ARB with the requirements of AB 32 and CEQA. These interests will be directly and adversely affected by the approvals at issue in this action in that ARB's approvals for the PROJECT violate provisions of law as set forth in this Petition and would cause significant and avoidable harm to PETITIONER, its members, members of the public, future generations of members of the public, and the environment.

6. PETITIONER brings this action on its own behalf, as well as on behalf of its members and of the citizens of California, who will be harmed by ARB's improper actions in that inclusion of the HSR project in the PROJECT and the subsequent expenditure of GGRF funds on the HSR project will result in increasing, rather than decreasing, GHG emissions and worsening the impacts of global warming.

7. PETITIONER, acting either directly or through its authorized representatives, submitted

written and oral comments to ARB objecting to the actions complained of herein prior to the close of the public hearing on the approval of the PROJECT. PETITIONER or public agencies, organizations, or members of the public raised each of the grounds for noncompliance with AB 32 and CEQA before Respondents, either orally or in writing, prior to the close of the public hearing before ARB on the PROJECT.

8. This action is for the purpose of enforcing important public rights and policies of the State of California. It is brought to ensure that the approvals granted by ARB are made in conformance with the provisions of CEQA and of AB 32. If successful, this action would require ARB to rescind the PROJECT's approval and confront the evidence that construction of CHSRA's high-speed rail project will result in increasing GHG emissions prior to 2020, contrary to the express intent of AB 32. By seeking a determination of whether the Project is consistent with AB 32, this action will help the public evaluate the validity of the assertions made by the Legislature in appropriating funds from the Greenhouse Gas Reduction Fund ("GGRF"[1]) to assist CHSRA in constructing its high-speed rail project. It will thus also promote the accountability of legislators to the voters. In these ways, the prosecution of this action will confer a substantial benefit on members of the public by enforcing the important public policies underlying CEQA and AB 32 that are intended to protect the public and the environment.

9. PETITIONER will not receive any financial benefit from the successful prosecution of this action, although PETITIONER is assuming a significant financial burden in prosecuting the action. In this action, PETITIONER is acting as a private attorney general to protect these public rights and policies and prevent such harms. As such, PETITIONER is entitled to recover its reasonable attorneys' fees under C.C.P. §1021.5.

10. Respondent CALIFORNIA AIR RESOURCES BOARD is an agency of the State of California established and operating under the laws of the State of California. ARB is the primary agency responsible for implementing the provisions of AB 32, and specifically for preparing and approving Climate Change Scoping Plans, which the Legislature directed to focus California's strategic planning for meeting the goals set by AB 32, and more specifically for

[1] A fund established under Government Code § 16428.8.

proposing uses for revenue obtained under provisions of AB 32. ARB is also the lead agency for environmental review of the PROJECT under its own CEQA-equivalence document, and was responsible for certifying the EA for the PROJECT.

11. The true names and capacities of DOES 1-10 are unknown to PETITIONER at this time; however PETITIONER alleges, based on information and belief, that each party named as DOE is responsible for the acts and omissions of each of the other respondents. Therefore PETITIONER sues such Parties by such fictitious names, and will ask leave of the Court to amend this Petition by inserting the true names and capacities of said Does when ascertained.

12. Real Party in Interest CALIFORNIA HIGH-SPEED RAIL AUTHORITY ("CHSRA") is an agency in the executive branch of the State of California under the State Transportation Agency. It is responsible, under the laws of California, for planning and implementing a high-speed rail system within and for the benefit of the State of California. CHSRA would be responsible for actually expending funds for the HSR project, as recommended in the PROJECT.

13. The true names and capacities of Real Parties in Interest DOES 11-20 are unknown to PETITIONER at this time; however PETITIONER alleges, based on information and belief, that each such party named as DOE has some interest in the subject matter of this action. Therefore PETITIONER sues such Parties by such fictitious names, and will ask leave of the Court to amend this Petition by inserting the true names and capacities of said Does when ascertained.

STATEMENT OF FACTS

I. AB 32 AND GREENHOUSE GAS REDUCTION STANDARDS

14. In 2006, the Legislature approved and the Governor signed AB 32. That bill specifically committed California to a strategy to reduce greenhouse gas ("GHG") emissions – i.e., gases that increase the earth's retention of solar radiation and are thought to be responsible for global warming. It set two specific goals: to reduce California's levels of GHG production to 1990 levels by 2020 and to reduce California's GHG production levels to no more than 20% of the 1990 levels by 2050. The aim of these reductions is to place California on a path that, if followed by the remainder of the world, would stabilize GHG levels worldwide and reduce the likelihood of catastrophic climate change impacts.

15. AB 32 requires ARB to take a number of actions towards its implementation. One of those actions is to prepare and approve a series of Climate Change Scoping Plans ("Scoping Plans"). The Scoping Plans are intended to achieve the maximum technologically feasible and cost-effective GHG emissions reductions by 2020. AB 32 requires that the Scoping Plan be updated at least every five years.

16. ARB prepared and adopted an initial Scoping Plan in 2008.

17. ARB prepared and certified a Functional Equivalent Document ("FED"), which serves as the equivalent of an Environmental Impact Report under CEQA, for its initial 2008 Scoping Plan. The 2008 Scoping Plan and 2008 FED were given final approval by ARB in May 2009.

18. The 2008 FED was successfully challenged in court for noncompliance with CEQA. Consequently, ARB was ordered to revise the 2008 FED to address deficiencies in its alternatives analysis. Consequently, in 2011 ARB prepared and, in August 2011 certified, a 2011 Supplement to the 2008 FED. ARB subsequently reapproved the 2008 Scoping Plan.

II. THE 2014 UPDATED SCOPING PLAN

19. ARB prepared a Draft First Update to the Scoping Plan, which it released to the public in February 2014. ARB also prepared and, on or about March 14, 2014, released to the public a Draft EA for the Updated Scoping Plan. The Draft EA was circulated for forty-five days for public review and comment.

20. PETITIONER submitted a written comment letter on the Draft Updated Scoping Plan. The letter specifically pointed out that the GHG Report submitted to ARB by CHSRA, and specifically referenced in the Draft Updated Scoping Plan at footnote 72 on page 63, grossly misrepresented the GHG emissions impacts of its proposed high-speed rail project. The CHSRA Report did so by not only understating the construction-related emissions compared to the asserted operational GHG emissions reductions, but perhaps even more importantly and egregiously, by omitting entirely the GHG emissions impacts associated with manufacturing the many thousands of tons of cement that would be needed for the project's construction. ARB made no changes to the Updated Scoping Plan or its EA in response to PETITIONER's letter.

21. On or about May 15, 2014, ARB released its Updated Scoping Plan in final form. On or about that same date, ARB also released its Final EA for that Updated Scoping Plan, including

its Responses to Comments on the Draft EA for the Updated Scoping Plan. Neither the final version of the Updated Scoping Plan nor the Final EA for the Updated Scoping Plan nor the Responses to Comments on the EA for the Updated Scoping Plan provided any response to PETITIONER's comments on the Scoping Plan and its environmental impacts, and specifically on its critique of including the CHSRA's high-speed rail project in the Project. The Final Updated Scoping Plan continued to include the CHSRA's high-speed rail project as a GHG emissions reduction measure.

22. On or about May 22, 2014, ARB held a public hearing on the First Update to the Climate Change Scoping Plan and its Final EA. At the hearing, PETITIONER, through its President, submitted oral comments repeating its criticisms of the Updated Scoping Plan and its Final EA. In particular, PETITIONER called attention to the fact that the Final EA failed to disclose or discuss the significant adverse GHG emissions impacts of including the high-speed rail project in the Updated Scoping Plan. Nevertheless, ARB certified the Final EA and approved the Updated Scoping Plan.

23. On or about May 23, 2014, ARB filed a Notice of Determination for its approval of the Updated Scoping Plan and certification of the associated Final EA.

PRELIMINARY ALLEGATIONS

24. PETITIONER has exhausted any and all available administrative remedies to the extent required by law. PETITIONER has raised its concerns and objections through both oral and written testimony throughout the administrative process and prior to the close of the public hearing for the final approval of the PROJECT.

25. PETITIONER has no plain, speedy or adequate remedy in the ordinary course of law unless the Court grants the requested writ of mandate requiring ARB to rescind their improper and illegal approval for the PROJECT and certification of its EA. In the absence of such relief, PETITIONER, its members, the public, and the environment will suffer irreparable harm from the implementation of the PROJECT, and specifically the increased GHG emissions associated with the high-speed rail project, and from acts undertaken in furtherance thereof without ARB's consideration of mitigation measures or alternatives that would reduce or avoid the PROJECT's

significant environmental impacts.

26. Pursuant to Public Resources Code §21167.5, on June 20, 2014, PETITIONER served notice on ARB of its intent to initiate litigation under CEQA over the PROJECT's approval. Proof of service of that notice, along with a copy thereof, are attached hereto as Exhibit A.

27. Pursuant to Public Resources Code §21167.7 and C.C.P. §388, PETITIONER has provided notice and a copy of this amended petition to the California Attorney General. A copy of said notice, with proof of service, is attached hereto as Exhibit B.

CHARGING ALLEGATIONS
FIRST CAUSE OF ACTION
INADEQUATE EA (VIOLATION OF CEQA)

28. PETITIONER hereby realleges and incorporates by reference the allegations contained in paragraphs 1 through 27, inclusive.

29. ARB is the lead agency for the PROJECT under CEQA.

30. As lead agency, ARB had a duty to prepare an EA that analyzed the PROJECT's potential environmental impacts, identified the PROJECT's potentially significant impacts, and, for each significant impact, identified, to the extent possible, feasible mitigation measures that would reduce that impact to a level of insignificance.

31. ARB also had a duty under CEQA to ensure that the EA considered a reasonable range of feasible alternatives that could avoid or significantly reduce one or more of the PROJECT's significant impacts, and that the EA provided adequate responses to all comments received on the PROJECT and its Draft EA during the comment period.

32. During the comment period, PETITIONER submitted written comments on the PROJECT pointing out its deficiencies, and specifically noting that inclusion of CHSRA's HSR project in the PROJECT would result in significant increases in GHG emissions, rather than the GHG emissions reductions called for by AB 32. ARB failed to adequately address these issues, either in the revised PROJECT, in its Responses to Comments document, or otherwise.

33. On or about May 22, 2014 ARB held its final public hearing on the PROJECT. PETITIONER, through its authorized representative, provided additional oral comments on defects relating to the PROJECT and its Final EA and specifically objected to the PROJECT's

inclusion of CHSRA's high-speed rail project, prior to the close of the public hearings on the PROJECT. The defects in the EA and in PROJECT identified in these comments are set forth in greater detail below. ARB failed to respond to these comments or to correct the errors identified by PETITIONER. Nevertheless, on that same day ARB closed the public hearing and approved Resolution #14-16 adopting the PROJECT and certifying the Final EA for the PROJECT. In doing so, ARB adopted CEQA findings purporting to address all of the PROJECT's potentially significant environmental impacts. In addition, ARB approved a Statement of Overriding Considerations ("SOC") purportedly justifying the PROJECT's significant and unavoidable impacts based on the benefits the PROJECT would provide. However, neither the findings nor the SOC identified the impacts pointed out by PETITIONER that would be associated with including the HSR project in the PROJECT.

COUNT NUMBER ONE – Inadequate PROJECT Description.

34. ARB violated CEQA by failing to include in the EA an accurate and adequate description of the high-speed rail project proposed for inclusion in the Scoping Plan. More specifically, the EA failed to include in the high-speed rail project the production of the enormous quantities of cement that would be needed to construct the high-speed rail project.

35. In addition, the EA was inadequate in considering only construction impacts from the first one-tenth of the Initial Operating Segment of the high-speed rail project while considering the putative GHG reduction effects associated with construction and operation of the entire Initial Operating Segment.

COUNT NUMBER TWO – Failure to identify significant impacts:

36. ARB violated CEQA by preparing and certifying an EA for the PROJECT that failed to properly identify significant impacts of the PROJECT, and more specifically improperly segmenting ("piecemealing") impacts associated with the HSR project.

37. Specifically, the EA was inadequate and improperly certified under CEQA for failing to identify as significant or understating the significance of the PROJECT's GHG emissions impacts. More specifically, the EA improperly relied on CHSRA's inadequate analysis of the GHG emissions impacts of including its high-speed rail project within the PROJECT, without

doing its own independent analysis and evaluation of those impacts and their significance, as required under CEQA. In particular, the EA failed to disclose, analyze: or consider 1) the GHG emissions impacts from construction of the entire Initial Operating Segment ("IOS") of the HSR project, relying instead on the CHSRA's analysis of the HSR project, which only considered the construction impacts (including GHG emissions impacts) from the first portion of that segment, dubbed "CP1" and amounting to only one-tenth the length of the IOS, while considering the putative GHG reduction effects of the construction and operation of the entire IOS; 2) the GHG emissions impacts caused by GHG emissions associated with the manufacture of the enormous quantities of cement that would be needed to construct the IOS, which cement would not have been manufactured but for the construction of the IOS.

COUNT NUMBER THREE – Failure to properly consider cumulative impacts of the PROJECT:

38. Even if the PROJECT did not directly include the cement production required to construct the HSR project, that cement production, and the GHG emissions impacts associated with that cement production, was a reasonably foreseeable future project resulting from approval of the PROJECT. Therefore, that cement production and its GHG emissions impacts should have been discussed under the PROJECT's cumulative impacts.

39. Neither the PROJECT nor the EA for the PROJECT addressed the GHG emissions impacts associated with the cement production required for construction of the HSR project, either as a direct or a cumulative impact of the PROJECT. That failure was a violation of CEQA and an abuse of ARB's discretion.

COUNT NUMBER FOUR – Failure to consider feasible mitigation measures to address significant PROJECT impacts:

40. The EA was inadequate in failing to consider any mitigation measures to address the significant GHG production impacts associated with including the high-speed rail project within its PROJECT. More specifically, The EA failed to adopt or even adequately consider feasible mitigation measures that could have reduced the PROJECT's significant GHG emissions impacts.

COUNT NUMBER FIVE – Failure to consider an adequate range of alternatives:

41. ARB violated CEQA by preparing and certifying an EA for the PROJECT that failed to consider and analyze an adequate range of alternatives to the PROJECT that could have feasibly avoided or reduced the significant GHG production impact resulting from including the high-speed rail project as a recommended GHG reduction measure in the PROJECT.

42. In particular, the EA failed to provide an adequate analysis of the following alternatives:

a. An alternative that would involve the redesign of the HSR project: such that it was shorter in length and used construction techniques requiring less use of cement (e.g., minimizing the use of raised concrete viaduct structures), all of which would have significantly reduced the required amount of concrete and associated GHG impact.

b. Eliminating the HSR project from consideration and instead increasing the amount of funding provided to other transportation projects, such as alternative fuel vehicles, that would improve transportation without producing the HSR project's GHG emissions impacts.

COUNT NUMBER SIX – Failure to adequately respond to comments:

43. The EA was deficient and in violation of CEQA for failing to provide good-faith reasoned responses, supported by substantial evidence in the record, to all comments received on the PROJECT and/or its EA identifying PROJECT impacts. In particular, the EA failed to provide any response to the comment letter submitted by PETITIONER.

44. All of the above violations of CEQA were prejudicial to PETITIONER and others in that they adversely affected the rights of PETITIONER, public agencies, and other organizations and members of the public to be provided with full and accurate information on the PROJECT, its impacts, and feasible ways to mitigate or avoid those impacts, as well as their right to be able to provide comments on those issues and have their comments responded to with reasoned fact-based responses.

45. ARB abused its discretion and failed to proceed in the manner prescribed by law by certifying the EA and approving the PROJECT when the EA failed to satisfy the requirements of CEQA as set forth above.

SECOND CAUSE OF ACTION
INADEQUATE FINDINGS

46. PETITIONER hereby realleges Paragraphs 1-45 inclusive and incorporates them herein by this reference.

47. Under CEQA, a lead agency must, in approving a project for which an EIR or an EIR-equivalent document has been prepared, make findings addressing each of the project's potentially significant impacts and explaining how those impacts have been mitigated or avoided, or, if the impacts are found to be unavoidable, explaining why mitigation or avoidance is infeasible and describing the justification, through a statement of overriding considerations, for why the project should proceed in spite of its significant and unavoidable impacts.

48. As part of Resolution #14-16 approving the PROJECT, the ARB adopted findings purporting to identify and discuss each of the PROJECT's potentially significant impact and why, even though those impacts might be unavoidable, ARB was justified in approving the PROJECT in spite of those impacts. However, those finding and the SOC were defective in that they failed to address the significant GHG emissions impacts from including the HSR project in the PROJECT. Likewise, the SOC was defective in failing to disclose and address the significant GHG emissions increases associated with the HSR project, making its balancing of PROJECT impacts against PROJECT benefits defective.

THIRD CAUSE OF ACTION
PROCEDURAL VIOLATION OF CEQA – FAILURE TO RECIRCULATE

49. PETITIONER hereby realleges Paragraphs 1-48 inclusive and incorporates them herein by this reference.

50. CEQA requires that when information is disclosed about the environmental impacts of a project after the CEQA document for the project has been released for public review and comment, and the new information discloses a new or significantly increased impact from the project, the CEQA document must be recirculated to allow comment on the new information.

51. The information provided by PETITIONER in its comment letter on the PROJECT disclosed that the HSR project included in the PROJECT would have significantly greater GHG emissions impacts than had been disclosed by the Draft EA for the PROJECT.

52. Contrary to its duty under CEQA, ARB failed to recirculate the EA to allow public and

agency comment on the newly disclosed increase in impacts.

53. ARB's failure to recirculate the EA was an abuse of discretion in violation of CEQA.

FOURTH CAUSE OF ACTION
APPROVAL IN VIOLATION OF THE GLOBAL WARMING PREVENTION ACT (AB 32)

54. PETITIONER hereby realleges Paragraphs 1-53 inclusive and incorporates them herein by this reference.

55. The PROJECT herein was a project requiring compliance with AB 32.

56. ARB violated AB 32 by approving the PROJECT when the PROJECT violated provisions of AB 32 by failing to ensure that the GHG emission reductions claimed to be achieved by the adoption of the PROJECT would achieve the maximum technologically feasible and cost-effective reductions in Greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020, as required by AB 32.

57. More specifically, the GHG reductions claimed through the inclusion of the HSR project in the PROJECT would not, in reality and as demonstrated by the evidence in the record before ARB, result in reducing greenhouse gas emissions by 2020, but were instead illusory because in reality the construction of the HSR project would result in a significant increase in GHG emissions by 2020 and that increase in emissions would not be fully offset by any concomitant reductions in GHG emissions, making the HSR project a contributor to a net increase in GHG emissions before 2020, directly contrary to the intent and requirements of AB 32.

PRAYER FOR RELIEF

WHEREFORE, PETITIONER prays for relief as follows:

1. For this Court's peremptory writ of mandate directing ARB to set aside and vacate its approval of the PROJECT and the certification for its EA insofar as the PROJECT and its EA include the HSR project as a component of the PROJECT;

2. For this Court's peremptory writ of mandate directing ARB, in taking any further actions to consider including the HSR project in said PROJECT, to use proper legal criteria under both CEQA and AB 32 and substantial evidence in the record before them in making any

determination of whether to grant approval to a PROJECT including the HSR project;

3. For an award of reasonable attorney's fees under Code of Civil Procedure section 1021.5 or as otherwise authorized by law;

4. For costs of suit incurred herein; and

5. For such other and further equitable or legal relief as the Court deems just and proper.

Dated: October 18, 2016

Stuart M. Flashman
Attorney for Transportation Solutions Defense and Education Fund

VERIFICATION

I, David Schonbrunn, am an officer of Transportation Solutions Defense and Education Fund, which is the petitioner in this action. I have been authorized by the petitioner to execute this verification on its behalf. I have read the foregoing Second Amended Petition and am familiar with the matters alleged therein. I am informed and believe that the matters stated therein are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on October 17, 2016 at Sausalito, California.

David Schonbrunn

Exhibit A

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stuflash.com

June 20, 2014

Mary D. Nichols, Board Chairman
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

RE: Notice of Intent to Initiate Legal Action.

Dear Ms. Nichols:

Please take notice that the Transportation Solutions Defense and Education Fund ("TRANSDEF") intends to initiate legal action against the California Air Resources Board under the California Environmental Quality Act and the California Global Warming Solutions Act of 2006 for its approval of the First Update to the Climate Change Scoping Plan and its approval of the Final Environmental Analysis for said project.

This notice is being sent pursuant to Public Resources Code §21167.5. Please contact me immediately if you need clarification or wish to discuss this notice further.

Most sincerely,

Stuart M. Flashman

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the action involved herein. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On June 20, 2014, I served the within NOTICE OF INTENT TO INITIATE LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Mary D. Nichols, Board Chairman
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on June 20, 2014.

Stuart M. Flashman

Exhibit B

Stuart M. Flashman (SBN 148396)
5626 Ocean View Dr.
Oakland, CA 94618-1533
Telephone/Fax: (510) 652-5373
e-mail: stu@stuflash.com

Attorney for Petitioner
Transportation Solutions Defense and Education Fund

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, Petitioner vs. CALIFORNIA AIR RESOURCES BOARD, an agency of the State of California, and DOES 1-10, inclusive, Respondents CALIFORNIA HIGH-SPEED RAIL AUTHORITY, an agency of the State of California, and DOES 11-20, inclusive, Real Parties In Interest	No. 34-2014-80001974-CU-WM-GDS Action under the California Environmental Quality Act NOTICE OF FILING OF AMENDED LEGAL ACTION [C.C.P. §388, Public Resources Code §21167.7]

TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

PLEASE TAKE NOTICE under Code of Civil Procedure section 388 that, on October 18, 2016, Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND filed the attached Second Amended Petition for Peremptory Writ of Mandate against Respondent CALIFORNIA AIR RESOURCES BOARD ("ARB") in Sacramento County Superior Court. The petition alleges that ARB violated the provisions of the California Environmental Quality Act (CEQA) and provisions of the California Global Warming Solutions Act (AB 32) in approving the First Update to the Climate Change Action Plan. A copy of the second amended petition is attached hereto for your reference.

Please provide a letter acknowledging receipt of this notice.

DATE: October 18, 2016

Stuart M. Flashman
Attorney for Petitioner
Transportation Solutions Defense
and Education Fund

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the action involved herein. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On October 18, 2016, I served the within NOTICE OF FILING OF AMENDED LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Office of the California Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on October 18, 2016.

Stuart M. Flashman

Stuart M. Flashman

DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority**
No.: **34-2016-00204740**

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. 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]**. 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 6, 2017, I served the attached **DECLARATION OF SHARON L. O'GRADY IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND EXHIBITS 1 TO 6** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

Michael J. Brady
Attorney at Law
Ropers, Majeski, Kohn & Bentley - Redwood City
1001 Marshall St, Suite 500
Redwood City, CA 94063
E-mail Address: *mbrady@rmkb.com*

Stuart M. Flashman
Attorney at Law
Law Offices of Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
E-mail Address: *Stu@stuflash.com*

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 6, 2017, at San Francisco, California.

Susan Chiang
Declarant

Signature

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