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EXEMPT FROM FEES PER
GOVERNMENT CODE §6103

Attorneys for Plaintiffs
JOHN TOS; AARON FUKUDA;
AND COUNTY OF KINGS

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

JOHN TOS, AARON FUKUDA, and COUNTY
OF KINGS,
Plaintiffs

v.

CALIFORNIA HIGH SPEED RAIL
AUTHORITY *et al.*,
Defendants

No. 34-2011-00113919 filed 11/14/2011
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31
**PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE**

Date: February 11, 2016
Time: 9:00 AM
Dept. 31
Judge: Hon. Michael P. Kenny
Trial Date: February 11, 2016

Plaintiffs John Tos, Aaron Fukuda, and County of Kings hereby request that the Court take judicial notice of the following facts and documents in support of their opening brief on Defendants' violations of Proposition 1A under Code of Civil Procedure §526a and/or other applicable basis for claims.

1. Under Evidence Code §§ 451(a) and 452(c), 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for the California High-Speed Rail Authority or its project, or any other high-speed rail project, and, in fact have rescinded prior funding for high-speed rail projects. In support of these facts, attached hereto are the following:

- Exhibit A – an excerpt from Public Law 112-8, dated April 9, 2011 and specifically Section 298, appropriating \$1,000,000,000.00 to the Federal Railroad

administration as capital assistance for high-speed rail corridors and intercity passenger rail service.

- Exhibit B – an excerpt from Public Law 112-10, dated April 15, 2011 setting the amount appropriated for high-speed rail corridors and intercity passenger rail service to zero (Sect. 2221), and rescinding the unexpended prior year appropriation of \$400,000,000.00 for that same account (Sect. 2222.)
- Exhibit C. – an excerpt from Public Law 113-76, dated January 17, 2014 rescinding prior appropriations of funds for Next Generation High-Speed Rail and for the Northeast Corridor Improvement Program.
- Exhibit D – a report from the Chair of the Appropriations Committee of the U.S. House of Representatives detailing proposed appropriations in the 2014 Appropriations Bill, which eventually became PL 113-76, and indicating that, “**No funding is provided for High-Speed Rail.**” [emphasis in original]

2. Under Evidence Code §452(d), of a portion of the transcript of this Court’s hearing in this case held on April 10, 2015, which portion is attached hereto as Exhibit E.

3. Under Evidence Code §452(d), of a portion of the transcript of this Court’s hearing in this case held on July 31, 2015, which portion is attached hereto As Exhibit F.

4. Under Evidence Code §452(d), of a portion of the Opposition Brief filed in this Court in this case on April 15, 2013, which portion is attached hereto as Exhibit G.

5. Under Evidence Code §452(c) and (h), of the mapping by the California Department of Transportation of California urban areas, as defined by the U.S. Census bureau, which mapping has been integrated into a set of on-line databases accessible through Google Earth at the URL: <http://earth.dot.ca.gov/> , and of the measurements of approximate distances along the proposed California high-speed rail right of way through California urban areas made using that database, in support of which attached hereto as Exhibit H is a true and correct copy of a screenshot of an example measurement, using Google Earth and the Caltrans databases, of the distance along Highway 99 (and the high-speed rail alignment) through the Fresno, CA urban area. Measurement endpoints are shown by yellow pins and connecting line. Measurement result (approx.. 89,711 ft = 17 miles) is shown in grey box at upper left hand corner of screenshot.

1 Dated: November 2, 2015

2 

3 STUART M. FLASHMAN
4 Attorney for Plaintiffs John Tos et al.

5 **SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. ALL OF THE REQUESTED DOCUMENTS ARE PROPERLY SUBJECT TO**
7 **JUDICIAL NOTICE.**

8 Evidence Code §§ 451 and 452 define the categories of documents or fact that are subject
9 to judicial notice. Of course, not all documents or facts subject to judicial notice must be noticed
10 by the court. A document or fact must be relevant. Further, in a mandamus proceeding, the fact
11 being noticed must be before the agency, either because it was placed before the agency in the
12 proceedings or because notice was implicit in the matter before the agency. (For example, an
13 agency constructing a rail line would be presumptively aware of all relevant FRA and CPUC
14 regulations, as well as standards and guideline promulgated by AREMA. Similarly, an agency
using the Caltrain right of way would be presumptively aware of the length of that right of way.)

15 **A. JUDICIAL NOTICE OF FEDERAL AND STATE STATUTES AND**
16 **REGULATIONS IS MANDATORY.**

17 Under Evidence Code §451(a), the court shall take judicial notice of all federal and state
18 statutes. (*Martinez v. Socoma Companies, Inc.* (1974) 11 Cal.3d 394, 400.) Such statutes
19 include appropriation bills. (*See, e.g., Assembly v. Public Utilities Com.* (1995) 12 Cal.4th 87, 97
20 fn.6 [court took judicial notice of California appropriation bills' enactment].) This judicial
notice of the appropriation act sections is required.

21 **B. FEDERAL AND STATE REGULATIONS ARE PROPERLY SUBJECT TO**
22 **JUDICIAL NOTICE.**

23 Under Evidence Code §452(b), all state or federal regulatory enactments are subject to
24 judicial notice. Even in a mandamus proceeding, an agency would be presumed to have notice
25 of regulations that its activities would be subject to. (*See, Universal Eng. Co. v. Bd. Of*
26 *Equalization* (1953) 118 Cal.App.2d 36, 43 [Legislature presumptively aware of administrative
27 ruling affecting pending legislation].) Thus, they would not need to be brought to the agency's
28 attention for judicial notice to be proper.

1 C. FEDERAL LEGISLATIVE REPORTS ARE SUBJECT TO JUDICIAL NOTICE

2 Evidence Code §452(c) allows the court to take judicial notice of all official acts of the
3 executive, legislative, or judicial department of the United State or any state. Such acts would
4 include reports issued by the chair of a Congressional Committee. In particular, legislative
5 reports are properly subject to judicial notice in determining legislative intent. (*Association of*
6 *California Ins. Companies v. Jones* (2015) 235 Cal.App.4th 1009, 1034 fn. 19.) Here, the report
7 of the House Committee Chair is appropriately noticed to determine that the Congress
8 specifically intended not to provide any funding for high-speed rail in its 2014 Appropriation
9 Act.

10 D. COURT DOCUMENTS, INCLUDING BRIEFS AND TRANSCRIPTS, ARE
11 PROPERLY SUBJECT TO JUDICIAL NOTICE.

12 Evidence Code §452(d) allows judicial notice to be taken of records of any California
13 court. (*People v. Doolin* (2009) 45 Cal.4th 390, 412 fn.14.) It is particularly appropriate for the
14 court to take judicial notice of documents filed in the case at hand. (*Dillard v. McKnight* (1949)
15 34 Cal.2d 209, 218.) It is also appropriate for the court to the judicial notice of transcripts of
16 hearings held before it. (*Oriola v. Thaler* (2000) 84 Cal.App.4th 397, 403 fn.3.)

17 E. JUDICIAL NOTICE OF THE EXTENT OF CALIFORNIA URBAN AREA
18 AND THEIR MAPPING BY THE STATE DEPARTMENT OF
19 TRANSPORTATION IS PROPERLY SUBJECT TO JUDICIAL NOTICE.

20 The extent of urban areas, as determined by the U.S. Census Bureau, is properly subject
21 to judicial notice as an official action of the federal executive branch under Evidence Code
22 §452(c). In addition, the State Department of Transportation's mapping of those areas and
23 establishing an on-line database of the results through Google Earth is also subject to judicial
24 notice for the same reason. Further, the extent of these areas and their locations are also subject
25 to judicial notice because CHSRA referenced these urban areas in its discussion of train speeds
26 in urban areas and included slides showing urban areas along its proposed alignment in its public
27 presentations. (See, e.g., AG 022216 [map showing alignment with urban areas shown in
28 yellow].)


1 **II. THE REQUESTED DOCUMENTS AND FACTS ARE RELEVANT TO ISSUES**
2 **BEFORE THE COURT.**

3 As noted, judicial notice, like all evidence, also requires relevance. All of the requested
4 documents or facts are relevant to issues that are before the Court. Thus the facts and documents
5 referenced in Paragraph 1 are relevant to the financial viability of the proposed alignment, and
6 specifically to the availability of federal funds to build out the IOS. The documents included in
7 Paragraphs 2-4 are relevant to showing the Defendants have taken certain position in this Court
8 on issues before the Court, thereby committing themselves to those positions. Finally, the facts
9 and documents identified in paragraph 5 are relevant to CHSRA's commitment to reducing
10 travel speed in urban areas, and the effect of that commitment on nonstop service travel times.

11 **CONCLUSION**

12 Plaintiffs therefore respectfully request that their requests for judicial notice be granted.
13 Dated: November 2, 2015

14 Respectfully Submitted,

15 

16 Stuart M. Flashman
17 Attorney for Plaintiffs John Tos et al.

18 **DECLARATION OF AUTHENTICITY OF STUART M. FLASHMAN**

19 I, Stuart M. Flashman, hereby declare as follows:

- 20 1. I am an attorney licensed to practice in the State of California. I have been an attorney
21 for Plaintiffs John Tos et al. in this case since the Spring of 2013. I have personal knowledge of
22 the facts stated in the declaration and am competent to testify to them if called as a witness.
- 23 2. The document attached as Exhibit A hereto is a true and correct copy of portions of
24 Public Law 112-8, which document was downloaded, in electronic form, from the official
25 website of the United States Congress at: <https://www.congress.gov/112/plaws/publ8/PLAW-112publ8.pdf>
- 26 3. The document attached as Exhibit B hereto is a true and correct copy of portions of
27 Public Law 112-10, which document was downloaded, in electronic form, from the official

1 website of the United States Congress at: [https://www.congress.gov/112/plaws/publ10/PLAW-](https://www.congress.gov/112/plaws/publ10/PLAW-112publ10.pdf)
2 [112publ10.pdf](https://www.congress.gov/112/plaws/publ10/PLAW-112publ10.pdf)

3 4. The document attached as Exhibit C hereto is a true and correct copy of portions of
4 Public Law 113-76, which document was downloaded, in electronic form, from the official
5 website of the United States Congress at: [https://www.congress.gov/113/plaws/publ76/PLAW-](https://www.congress.gov/113/plaws/publ76/PLAW-113publ76.pdf)
6 [113publ76.pdf](https://www.congress.gov/113/plaws/publ76/PLAW-113publ76.pdf)

7 5. The document attached as Exhibit D hereto is a true and correct copy of an official report
8 prepared by the U.S. House of Representatives Appropriations Committee, which document was
9 downloaded, in electronic form, from the official website of that committee at:
10 [http://appropriations.house.gov/uploadedfiles/01.13.14_fy_2014_omnibus_-](http://appropriations.house.gov/uploadedfiles/01.13.14_fy_2014_omnibus_-_transportation_housing_and_urban_development_-_summary.pdf)
11 [transportation housing and urban development - summary.pdf](http://appropriations.house.gov/uploadedfiles/01.13.14_fy_2014_omnibus_-_transportation_housing_and_urban_development_-_summary.pdf)

12 6. The document attached hereto as Exhibit E is a true and correct copy of a portion of the
13 transcript of this Court's hearing on April 10, 2015 as provided to me by the official court
14 reporter.

15 7. The document attached hereto as Exhibit F is a true and correct copy of a portion of the
16 transcript of this Court's hearing on July 31, 2015 as provided to me by the official court
17 reporter.

18 8. The document attached hereto as Exhibit G is a true and correct copy of a portion of
19 Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' "Part I"
20 Opening Brief in Support of Petition for Writs of Mandate, as downloaded from the court's
21 official website.

22 9. The document attached hereto as Exhibit H is a true and correct copy of a screenshot
23 taken on my computer of the webpage at the address <http://earth.dot.ca.gov/> showing the
24 measurement of the distance across an urban area along the CHSRA project alignment.

25 I declare under penalty of perjury under the laws of the State of California that the above
26 statements are true. Executed on November 2, 2015 at Oakland, California.

27 

28 Stuart M. Flashman

Exhibit A

Public Law 112–8
112th Congress

An Act

Apr. 9, 2011
[H.R. 1363]

Making appropriations for the Department of Defense for the fiscal year ending September 30, 2011, and for other purposes.

Further
Additional
Continuing
Appropriations
Amendments,
2011.
Ante, p. 23.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Continuing Appropriations Act, 2011 (Public Law 111–242) is further amended—

(1) by striking the date specified in section 106(3) and inserting “April 15, 2011”;

(2) by adding after section 294, as added by the Additional Continuing Appropriations Amendments, 2011 (section 1 of Public Law 112–6), the following new sections:

“SEC. 295. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Office of the Secretary—Transportation Planning, Research, and Development’ at a rate for operations of \$9,800,000.

“SEC. 296. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Federal Aviation Administration—Facilities and Equipment’ at a rate for operations of \$2,927,500,000.

“SEC. 297. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Federal Aviation Administration—Research, Engineering, and Development’ at a rate for operations of \$187,000,000.

“SEC. 298. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Federal Railroad Administration—Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service’ at a rate for operations of \$1,000,000,000.

“SEC. 299. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Federal Railroad Administration—Railroad Research and Development’ at a rate for operations of \$35,100,000.

“SEC. 300. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Federal Transit Administration—Capital Investment Grants’ at a rate for operations of \$1,720,000,000.

“SEC. 301. Notwithstanding section 101, amounts are provided for ‘Department of Transportation—Federal Transit Administration—Research and University Research Centers’ at a rate for operations of \$64,200,000.

“SEC. 302. Notwithstanding section 101, amounts are provided for ‘Department of Housing and Urban Development—Public and Indian Housing—Public Housing Operating Fund’ at a rate for operations of \$4,626,000,000.

“SEC. 303. Notwithstanding sections 101 and 226, amounts are provided for ‘Department of Housing and Urban Development—Community Planning and Development—Community Development Fund’ at a rate for operations of \$4,230,068,480, of which \$0 shall be for grants for the Economic Development Initiative (EDI), \$0 shall be for neighborhood initiatives, and \$0 shall be for grants specified in the last proviso of the last paragraph under such heading in title II of division A of Public Law 111-117: *Provided*, That the second and third paragraphs under such heading in title II of division A of Public Law 111-117 shall not apply to funds appropriated by this Act.”.

This Act may be cited as the “Further Additional Continuing Appropriations Amendments, 2011”.

Approved April 9, 2011.

LEGISLATIVE HISTORY—H.R. 1363:

CONGRESSIONAL RECORD, Vol. 157 (2011):

Apr. 7, considered and passed House.

Apr. 8, considered and passed Senate, amended. House concurred in Senate amendment.



Exhibit B

Contract Authorization), (Limitation on Obligations), (Highway Trust Fund)” for the commercial driver’s license information system modernization program, \$3,000,000 shall be made available for audits of new entrant motor carriers to carry out section 4107(b) of Public Law 109–59, and 31104(a) of title 49, United States Code, and \$5,000,000 shall be made available for the commercial driver’s license improvements program to carry out section 31313 of title 49, United States Code.

SEC. 2215. Of the unobligated amounts available for Safety Belt Performance Grants under section 406 of title 23, United States Code, \$76,000,000 are permanently rescinded.

Rescission.

SEC. 2216. Notwithstanding section 1101, the level for “Department of Transportation, Federal Railroad Administration, Railroad Safety Technology Program” shall be \$0.

SEC. 2217. Notwithstanding section 1101, the level for “Department of Transportation, Federal Railroad Administration, Safety and Operations” shall be \$176,950,000.

SEC. 2218. Notwithstanding section 1101, the level for “Department of Transportation, Federal Railroad Administration, Railroad Research and Development” shall be \$35,100,000.

SEC. 2219. Notwithstanding section 1101, the level for “Department of Transportation, Federal Railroad Administration, Rail Line Relocation and Improvement Program” shall be \$10,532,000.

SEC. 2220. Notwithstanding section 1101, the level for “Department of Transportation, Federal Railroad Administration, Capital and Debt Service Grants to the National Railroad Passenger Corporation” shall be \$923,625,000.

SEC. 2221. Notwithstanding section 1101, the level for “Department of Transportation, Federal Railroad Administration, Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service” shall be \$0.

SEC. 2222. Of the prior year unobligated balances available for “Department of Transportation, Federal Railroad Administration, Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service”, \$400,000,000 is rescinded.

Rescission.

SEC. 2223. Notwithstanding section 1101, the level for “Department of Transportation, Federal Transit Administration, Grants for Energy Efficiency and Greenhouse Gas Reductions” shall be \$50,000,000.

SEC. 2224. Notwithstanding section 1101, the level for “Department of Transportation, Federal Transit Administration, Capital Investment Grants” shall be \$1,600,000,000.

SEC. 2225. Of the funds made available for “Department of Transportation, Federal Transit Administration, Capital Investment Grants” in division A of Public Law 111–117, \$280,000,000 is rescinded.

Rescission.

SEC. 2226. Notwithstanding section 1101, the level for “Department of Transportation, Federal Transit Administration, Research and University Research Centers” shall be \$59,000,000.

SEC. 2227. Notwithstanding section 1101, the level for “Department of Transportation, Maritime Administration, Operations and Training” shall be \$151,750,000, of which \$11,240,000 shall remain available until expended for maintenance and repair of training ships at State Maritime Academies; \$15,000,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; and \$59,057,000 shall be available for operations at the United States Merchant Marine Academy:

Exhibit C

Public Law 113–76
113th Congress

An Act

Making consolidated appropriations for the fiscal year ending September 30, 2014,
and for other purposes.

Jan. 17, 2014
[H.R. 3547]

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

Consolidated
Appropriations
Act, 2014.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consolidated Appropriations
Act, 2014”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

- Sec. 1. Short Title.
- Sec. 2. Table of Contents.
- Sec. 3. References.
- Sec. 4. Explanatory Statement.
- Sec. 5. Statement of Appropriations.
- Sec. 6. Availability of Funds.
- Sec. 7. Technical Allowance for Estimating Differences.
- Sec. 8. Launch Liability Extension.

**DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG
ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2014**

- Title I—Agricultural Programs
- Title II—Conservation Programs
- Title III—Rural Development Programs
- Title IV—Domestic Food Programs
- Title V—Foreign Assistance and Related Programs
- Title VI—Related Agencies and Food and Drug Administration
- Title VII—General Provisions

**DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2014**

- Title I—Department of Commerce
- Title II—Department of Justice
- Title III—Science
- Title IV—Related Agencies
- Title V—General Provisions

DIVISION C—DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2014

- Title I—Military Personnel
- Title II—Operation and Maintenance
- Title III—Procurement
- Title IV—Research, Development, Test and Evaluation
- Title V—Revolving and Management Funds
- Title VI—Other Department of Defense Programs
- Title VII—Related Agencies
- Title VIII—General Provisions
- Title IX—Overseas Contingency Operations
- Title X—Military Disability Retirement and Survivor Benefit Annuity Restoration

**DIVISION D—ENERGY AND WATER DEVELOPMENT AND RELATED
AGENCIES APPROPRIATIONS ACT, 2014**

- Title I—Corps of Engineers—Civil

Provided, That of the amounts made available under this heading, not less than \$50,000,000 shall be made available to bring Amtrak-served facilities and stations into compliance with the Americans with Disabilities Act: *Provided further*, That after an initial distribution of up to \$200,000,000, which shall be used by the Corporation as a working capital account, all remaining funds shall be provided to the Corporation only on a reimbursable basis: *Provided further*, That of the amounts made available under this heading, up to \$40,000,000 may be used by the Secretary to subsidize operating losses of the Corporation should the funds provided under the heading “Operating Grants to the National Railroad Passenger Corporation” be insufficient to meet operational costs for fiscal year 2014: *Provided further*, That the Secretary may retain up to one-half of 1 percent of the funds provided under this heading to fund the costs of project management and oversight of activities authorized by subsections 101(a) and 101(c) of division B of Public Law 110–432: *Provided further*, That the Secretary shall approve funding for capital expenditures, including advance purchase orders of materials, for the Corporation only after receiving and reviewing a grant request for each specific capital project justifying the Federal support to the Secretary’s satisfaction: *Provided further*, That except as otherwise provided herein, none of the funds under this heading may be used to subsidize operating losses of the Corporation: *Provided further*, That none of the funds under this heading may be used for capital projects not approved by the Secretary of Transportation or on the Corporation’s fiscal year 2014 business plan: *Provided further*, That in addition to the project management oversight funds authorized under section 101(d) of division B of Public Law 110–432, the Secretary may retain up to an additional \$5,000,000 of the funds provided under this heading to fund expenses associated with implementing section 212 of division B of Public Law 110–432, including the amendments made by section 212 to section 24905 of title 49, United States Code.

NEXT GENERATION HIGH-SPEED RAIL

(RESCISSION)

Of the funds made available for Next Generation High Speed Rail, as authorized by sections 1103 and 7201 of Public Law 105–178, \$1,973,000 are hereby permanently rescinded: *Provided*, That no amounts may be cancelled from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

(RESCISSION)

Of the funds made available for the Northeast Corridor Improvement Program, as authorized by Public Law 94–210, \$4,419,000 are hereby permanently rescinded: *Provided*, That no amounts may be cancelled from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Exhibit D

House Appropriations Committee

Chairman Hal Rogers

Website address: <http://appropriations.house.gov/>

FY 2014 Omnibus – Transportation, Housing and Urban Development Appropriations

***Legislation includes funding for vital transportation infrastructure investments
and maintains housing programs for low-income families and veterans***

The Transportation, Housing and Urban Development (THUD) portion of the Omnibus prioritizes funding for transportation projects and programs that are essential to growing the nation's economy and commerce, as well as for programs that support the housing needs of our most vulnerable citizens. The legislation balances these needs with spending reductions in lower-priority programs, including cuts to accounts in both the Department of Transportation and the Department of Housing and Urban Development. The reasonable adjustments in this bill streamline these Departments by making long overdue reductions to ensure funding is available for more critical programs like staffing the nation's busy airports, maintaining roads and bridges, and providing housing assistance for low-income families and veterans.

In total, the bill provides \$50.8 billion in discretionary funding, a decrease of \$961 million compared to the fiscal year 2013 enacted level. The bill does not include funding for any new programs proposed by the Senate or the Administration.

Transportation – The bill includes \$17.8 billion in discretionary appropriations and allows \$53.5 billion in non-discretionary “obligation limitation” funding for the Department of Transportation. This is \$164 million below the fiscal year 2013 enacted level and \$4.9 billion below the President's request.

- **Highways** – The bill provides almost \$41 billion in obligation limitation funding for the Federal Highway program – the same level authorized in the MAP-21 transportation authorization legislation, which expires on September 30, 2014. This is an increase of \$557 million from the fiscal year 2013 level.
- **Air** – Included in the legislation is \$12.4 billion for the Federal Aviation Administration (FAA), \$168 million below the fiscal year 2013 enacted level. This funding will support the full operations of the air traffic control system, including the hiring and training of air traffic controllers and safety inspectors to ensure that facilities are fully staffed to serve the nation's flying public. The bill preserves funding for FAA's Next Generation air transportation systems (NextGen) – investments that will help ease future congestion and

reduce delays for travelers in U.S. airspace. In addition, \$3.35 billion in “obligation limitation” funding is provided for airport construction projects. The bill also rejects the Administration’s proposals for new passenger facility fees.

- **War Risk Insurance** - The bill extends war risk insurance for U.S. air carriers through September 30, 2014. This program insures airlines against catastrophic losses due to terrorism or other acts of war. The extension will allow time for Congress to consider a longer-term reauthorization of this program.
- **Rail** – The Federal Railroad Administration is funded at \$1.6 billion, a decrease of \$34.6 million below the fiscal year 2013 enacted level. The bill expands oversight and includes policy reforms for Amtrak to ensure the best use of tax dollars – such as requiring overtime limits on Amtrak employees to reduce unnecessary costs, and prohibiting federal funding for routes where Amtrak offers a discount of 50% or more off normal, peak fares. **No funding is provided for High Speed Rail.**
- **Transit** – The bill contains \$2.15 billion for the Federal Transit Administration (FTA), a decrease of \$100 million below the fiscal year 2013 enacted level. The legislation also allows \$8.6 billion in state and local transit grant funding from the Mass Transit Account (of the Highway Trust Fund), consistent with MAP-21, to help local communities build, maintain, and ensure the safety of their mass transit systems.

The legislation provides a total of \$2.1 billion for Capital Investment Grants (“New Starts”), full funding for state and local “Small Starts,” and funding for all current “Full Funding Grant Agreement” projects. These programs provide competitive grant funding for major transit capital investments, including rapid rail, light rail, bus rapid transit, and commuter rail, that are planned and operated by local communities.

- **Safety** – The legislation contains funding for the various transportation safety programs and agencies within the Department of Transportation. This includes \$819 million in both mandatory and discretionary funding for the National Highway Traffic Safety Administration (NHTSA), an increase of \$8.9 million over the fiscal year 2013 enacted level; and \$585 million for the Federal Motor Carrier Safety Administration, an increase of \$24 million above the fiscal year 2013 enacted level. Also included is a \$12.8 million increase over the fiscal year 2013 level for the Pipeline and Hazardous Materials Safety Administration.

Housing and Urban Development (HUD) – The legislation includes a total of \$32.8 billion for the Department of Housing and Urban Development, a decrease of \$687 million below the fiscal year 2013 enacted level. The bill does not contain funding for any new, unauthorized “sustainable,” “livable,” or “green” community development programs, and includes provisions to streamline and reduce costs of housing voucher programs to save taxpayer dollars.

- **Section 8 and Public Housing** – Included in the bill is \$26.3 billion for Public and Indian Housing. This is an increase of \$411 million above the fiscal year 2013 enacted level, and is \$1.5 billion below the President’s request. Within this total, the bill provides

funding to continue assistance to 2.2 million families served by the Housing Choice Voucher program. The bill also fully funds the President's request for 10,000 new veterans' housing vouchers at \$75 million.

- **Housing Programs** – Housing programs are funded at \$10.5 billion, \$561 million above fiscal year 2013's enacted level and \$381 million below the President's request. Within this total, the bill provides \$126 million for housing for the disabled and \$383.5 million for housing for the elderly.

Community Planning and Development – The bill contains \$6.6 billion for Community Planning and Development programs – a cut of \$145 million below last year's level. The Community Development Block Grant formula program is funded at slightly over \$3 billion, \$82 million above the fiscal year 2013 enacted level.

#####

Exhibit E

1 I N T H E S A C R A M E N T O S U P E R I O R C O U R T
2 C O U N T Y O F S A C R A M E N T O , S T A T E O F C A L I F O R N I A
3 H O N O R A B L E M I C H A E L P . K E N N Y , J U D G E , D E P A R T M E N T 31

4 ---oOo---

5 J O H N T O S , A A R O N F U K U D A ; A N D)
6 C O U N T Y O F K I N G S , A P O L I T I C A L)
7 S U B D I V I S I O N O F T H E S T A T E O F)
8 C A L I F O R N I A ,)
9 P l a i n t i f f a n d P e t i t i o n e r s ,)
10)
11 v s .) C A S E N U M B E R
12) 34-2011-00113919
13 C A L I F O R N I A H I G H S P E E D R A I L A U T H O R I T Y ;)
14 J E F F M O R A L E S , C E O O F C H S R A ; G O V E R N O R)
15 J E R R Y B R O W N ; S T A T E T R E A S U R E R)
16 B I L L L O C K Y E R ; D I R E C T O R O F F I N A N C E)
17 A N A M A T A S A N T O S ; A C T I N G S E C R E T A R Y O F)
18 B U S I N E S S , T R A N S P O R T A T I O N A N D H O U S I N G)
19 B R I A N K E L L Y ; S T A T E C O N T R O L L E R)
20 J O H N C H I A N G ; A N D D O E S I - V , I N C L U S I V E ,)
21 D e f e n d a n t s a n d R e s p o n d e n t s .)

22
23 ---oOo---

24 F R I D A Y , A P R I L 10 , 2015

25 ---oOo---

26 R E P O R T E R ' S T R A N S C R I P T O F
27 M O T I O N T O A U G M E N T A D M I N I S T R A T I V E R E C O R D

28 ---oOo---

1 what roadway it was going to build. But those weren't
2 decisions being made by its board, those were decisions
3 that were being made informally, in a lot of cases
4 behind the scenes. And -- and they have never been
5 brought formally to the board yet and yet they admitted
6 in discovery, yeah, we made those decisions.

7 Now, we haven't had discovery here. We
8 requested discovery. It has never been followed up on.
9 And -- and maybe that's one of the things that ought to
10 happen is we ought to have the completion of discovery.

11 But -- but, nevertheless, we do have these
12 documents that say this is what the Authority is doing,
13 and -- and we think that that needs to be before the
14 Court.

15 THE COURT: Ms. O'Grady, you want to respond?

16 MS. O'GRADY: Yes, Your Honor.

17 Every decision that the Authority makes is
18 through a formal process, every decision.

19 There are three decisions at issue in this case:

20 The decision to go to a blended system. That
21 was made in 2012 at the behest of the Legislature and
22 now is statutorily required, at least for the moment,
23 and is documented and reflected and approved in the 2012
24 business plan, and continues, and was reaffirmed in the
25 2014 business plan.

26 The second issue is can they -- is the current
27 system going to require an operating subsidy.

28 That -- the most recent analysis of that, which took

1 into account input from the J.A.L. and the peer review
2 group, is reflected in and fully documented in the 2014
3 business plan and was approved by the Authority.

4 The third issue is the travel time. The travel
5 time analysis was done in 2013. It was reviewed by the
6 peer review group and presented to the legislature in
7 August/September 2013, and was incorporated in and
8 attached to the 2014 business plan.

9 Those are all formal, discrete decisions.
10 What someone says -- the issue is what the approved plan
11 is, to the extent it exists. We don't have all the
12 alignments, so there are ifs. And those won't -- but
13 there has been no informal decisions on where alignments
14 will be. When the alignments are ultimately determined,
15 they will be, at least currently, subject to CEQA review
16 and there will be an approval by the board of the
17 specific alignments. These are all decisions.

18 Someone isn't in the back room making little
19 decisions and committing the Authority to anything.
20 Every commitment by the Authority is reflected in a
21 document.

22 And when we determined what we would include in
23 this administrative record, we did not confine ourselves
24 just to the 2014 business plan. We put in the
25 programmatic D.N.R.s. We put in -- you know, if it was
26 something that the Authority did that would reflect even
27 the gradual, incremental approach and where they got
28 there, we put it in. There are documents, they were

Exhibit F

1 least what they have to do, in terms of going over the
2 Tehachapis. And if we can show that that portion, that taken
3 together with everything else about the route, we can't -- they
4 can't make the two-hour-and-40-minute time frame, then our
5 argument is, is that sufficient to make this case ripe.

6 And consequently, because there isn't a formal
7 decision, we shouldn't be limited to the administrative record
8 for the 2014 and 2012 business plans on that issue, because
9 that issue was not determined by a formal process. It's really
10 an informal situation where the high speed Rail Authority has
11 been making determinations. Particularly the Vacca memo and
12 the alignment that was picked by the Vacca memo, that was done
13 informally without an opportunity for public comment. And so
14 we shouldn't be limited to the administrative record on that.

15 **THE COURT:** Before you leave that, let me go to
16 Ms. O'Grady on that.

17 Ms. O'Grady, do you think that in fact -- that that
18 memo demonstrates that, in fact, a issue of the Tehachapi
19 crossing was before the Board -- before the Authority.

20 **MS. O'GRADY:** No, Your Honor. No, Your Honor. I
21 wanted to get back to --

22 **THE COURT:** Tell me why you think it doesn't.

23 **MS. O'GRADY:** It's because there has been no final
24 decision on the alignment. But as the process goes forward,
25 the Authority wants to make sure that they aren't -- in
26 Your Honor's words -- haven't done something that precludes
27 compliance. So they -- so knowing that there are uncertainties
28 about the route that -- and therefore they can be changed. And

1 no one can say exactly what that alignment is right now. They
2 went and took a look, okay, have we done something that would
3 preclude us from making the time travel. And so they,
4 therefore, in the absence of any rails, any train and many
5 uncertainties, did calculations using very well-recognized
6 computer technology that's way over my head, and concluded that
7 they can make the travel time. They presented that to the peer
8 review group which reported on that to the legislature.

9 So the Vacca note is not a decision on alignment, but
10 it is their work to ensure that they haven't gone off the rails
11 and done something that would preclude getting -- making that
12 travel time. So to characterize an internal staff memo as a
13 decision, at some point there is going to be a decision exactly
14 how we're going to get through the Tehachapis. And that's
15 going to be in a funding plan, in an EIR, in a business plan
16 where there's a commitment made. But right now, as counsel can
17 see, there is no commitment exactly how that alignment is going
18 to go.

19 But to try to make sure that you don't get in a
20 situation like the *Hayward* case where they had conceded that
21 they were doing something and basically said, and it doesn't
22 matter because we trumped the Bond Act, that the high -- the --
23 Caltrans can make a decision that's in -- that is at odds. So
24 in that case where there was a clear -- at least the Court
25 there found there was a clear enough indication that they were
26 not going to be able to comply.

27 Nothing like that has happened. There's no final
28 alignment decisions. But what we have is a voluminous record

1 of those decisions that have been made where alignments have
2 been fixed, and 30,000 pages of record, none of which has been
3 indicated was the case in *Hayward* -- in the *Hayward* case. So
4 to characterize an internal staff memo as a decision of a body
5 that can only act in public by public meeting, just
6 misunderstands what the whole case is about.

7 To sum -- certainly one could take -- fairly take a
8 position that, without a final alignment, the case is not ripe.
9 But if, for example, high speed Rail was spending money going
10 up to Eureka, I think you could make a decision that they had
11 made a decision it was contrary. But that's not what we have
12 here. We have a fulsome administrative record. They haven't
13 shown anything -- they keep arguing a motion that was resolved
14 a year ago, which is their desire to bring in extrinsic
15 evidence. And the Authority can only be judged on the evidence
16 that's before them and on which they base their decision.

17 They base -- they base their decision on voluminous
18 technical memos. And God knows, I was trying to calculate how
19 many pages this record is going to be, and it's going to be at
20 least more than 30,000 pages. So this is a fulsome record, and
21 it should be decided, as Your Honor said, in conformance with
22 what's before -- what was before the Authority. Because how
23 can they have abused their discretion in not considering
24 something that was never presented to them.

25 **MR. FLASHMAN:** Your Honor, again, when the Authority
26 made decisions in a formal manner, they are definitely -- you
27 know, we agree that that's, in general, limited to the
28 administrative record. But one of the questions that the --

Exhibit G

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17 APR 15 PM 4:06

LEGAL PROCESS #6

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8 Governor Edmund G. Brown Jr., State Treasurer
Bill Lockyer, Director of Finance Ana Matosantos,
9 Acting Secretary of Business, Transportation and
Housing Brian Kelly and State Controller John
10 Chiang*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SACRAMENTO

13
14
15
16 JOHN TOS, AARON FUKUDA; AND
COUNTY OF KINGS, A POLITICAL
17 SUBDIVISION OF THE STATE OF
CALIFORNIA,

18 Plaintiffs,

19 v.

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

27 Defendants.
28

Case No. 34-2011-00113919

DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS' "PART
I" OPENING BRIEF IN SUPPORT OF
PETITION FOR WRITS OF MANDATE

Date: May 31, 2013

Time: 9:00 a.m.

Dept: 31

Judge: Hon. Michael P. Kenny

Trial Date: May 31, 2013

Action Filed: November 14, 2011

Filed by fax

1 commercial yield (i.e., maximum number of riders and revenue) and were in no way tied to the
2 ultimate performance capabilities for travel time along the Phase 1 corridor. (Vacca Decl., ¶ 10.)
3 Therefore, the operating plan is not proof that the Authority is designing a non-compliant system;
4 the operating plan shows only a pattern of service that yields the maximum number of riders.

5 The evidence shows that the Authority's design is compliant. Following adoption of the
6 revised 2012 business plan, questions were raised whether a high-speed rail Phase I corridor
7 system containing blended shared tracks on the San Francisco Peninsula, as opposed to dedicated
8 high-speed rail tracks only, could be designed to achieve the two hour and 40 minute San
9 Francisco to Los Angeles travel time characteristic requirement of the bond act. (Vacca Decl., ¶
10 2.) In response, the Authority formally assessed whether a nonstop travel time of two hours and
11 40 minutes could be achieved given then-currently proposed rail alignments and blended
12 operations proposed to date. (*Id.*, ¶ 3.) That assessment concluded that a travel time of two hours
13 and 32 minutes between San Francisco and Los Angeles could be achieved under current
14 planning (*id.*, ¶ 4; Defs' RJN, Exh. 3), and there may be even more room for travel time
15 improvement based on train performance improvements, use of tilt technology, more aggressive
16 alignments and higher maximum speeds, all unknown variables at this point in time. (*Id.*, ¶ 4.)

17 **D. The Authority Has Not Yet Spent Funds on Construction Activities**

18 Tos alleges that funds spent to develop a request for proposals to construct the first phase of
19 the ICS, including a "commitment" to pay a stipend to qualified contractors who submit bids, and
20 payment of staff salaries and contractor expenses associated with development of the request for
21 proposals are construction activities, spending for which is not authorized until approval of a
22 second funding plan, which the Authority has not yet submitted.. (SAC, ¶¶ 17(b), 17a, 60-63, 66-
23 68.) These allegations of illegal spending are meritless because these costs are not "construction
24 activities" as defined in the bond act.

25 Section 2704.08, subdivision (d), prohibits any spending of bond proceeds prior to the
26 approval of a second funding plan "for construction and real property and equipment
27 acquisitions," except as specified in subdivision (g). Subdivision (g) authorizes bond proceeds to
28

Exhibit H

Fly To Location


















Sacramento, CA

GO

Map Tools

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☒ Measure

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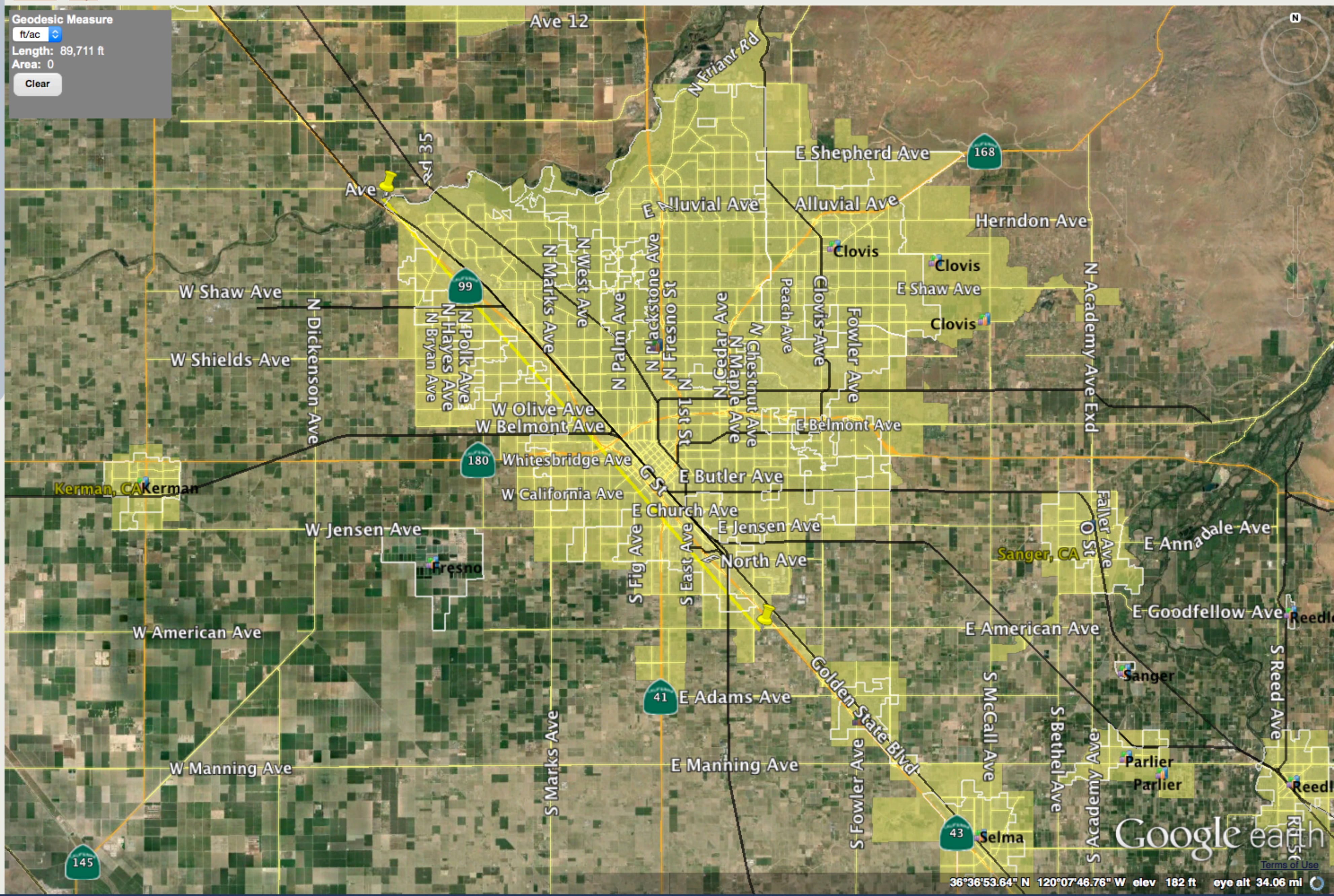
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ft/ac

Length: 89,711 ft

Area: 0

Clear



Google Earth

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36°36'53.64" N 120°07'46.76" W elev 182 ft eye alt 34.06 mi