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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12 **JOHN TOS; QUENTIN KOPP; TOWN OF**
13 **ATHERTON, a municipal corporation;**
14 **COUNTY OF KINGS, a subdivision of the**
15 **State of California; PATRICIA LOUISE**
16 **HOGAN-GIORNI; ANTHONY WYNNE,**
17 **COMMUNITY COALITION OF HIGH-**
18 **SPEED RAIL, a California nonprofit**
corporation; TRANSPORTATION
SOLUTIONS DEFENSE AND
EDUCATION FUND, a California
nonprofit corporation; and CALIFORNIA
RAIL FOUNDATION, a California
nonprofit corporation,

19 Petitioners and Plaintiffs,

20 v.

21 **THE STATE OF CALIFORNIA,**
22 **CALIFORNIA HIGH SPEED RAIL**
23 **AUTHORITY, a public entity, BOARD OF**
24 **DIRECTORS OF THE CALIFORNIA**
25 **HIGH-SPEED RAIL AUTHORITY in their**
26 **individual and official capacities, JEFF**
27 **MORALES, in his official capacity as Chief**
28 **Executive Officer of the California High-**
Speed Rail Authority, MICHAEL COHEN,
in his official capacity as Director of the
Department of Finance of the State of
California, and DOES 2-20 inclusive,

Respondents and Defendants.

Case No. 34-2016-00204740

**RESPONDENTS' OBJECTIONS TO
PETITIONERS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Date: October 26, 2018
Time: 11:00 a.m.
Dept: 28
Judge: Hon. Richard K. Sueyoshi
Trial Date: Not Yet Set

Action Filed: December 13, 2016

1 Respondents the California High-Speed Rail Authority and the State of California
2 (collectively, "Respondents") object to Petitioners' Request for Judicial Notice in Support of
3 Motion for Judgment on the Pleadings on First Cause of Action ("Petitioners' RJN") as follows:

4 **A. Objection Applicable to All Exhibits – Truthfulness and Proper**
5 **Interpretation of Documents.**

6 Petitioners request that the Court "take judicial notice of the following facts and
7 documents." (Petitioners' RJN at p. 2.) However, it is not clear from the request which "facts"
8 are at issue. Petitioners seem to describe some "facts" in the RJN (see, e.g., Petitioners' RJN, p. 1
9 [numbered paragraph 1]), and Petitioners' Memorandum of Points and Authorities in Support of
10 Motion for Judgment on the Pleadings ("Petitioners' Brief") contains numerous assertions about
11 the meaning and significance of various documents. But respondents should not be left to guess
12 about which "facts" petitioners contend are judicially noticeable, and there is no basis for the
13 Court to take judicial notice of the "following facts" without further specification by petitioners.

14 Respondents also object to each and every request for judicial notice of a document to the
15 extent petitioners seek judicial notice of the truth of the contents thereof generally, and to the
16 extent petitioners seek judicial notice of their interpretation of those contents. "When judicial
17 notice is taken of a document, . . . the truthfulness and proper interpretation of the document are
18 disputable." (*Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660
19 (2015), quoting *StorMedia, Inc. v. Superior Court* (1999) 20 Cal.4th 449, 457, fn. 9.) Put another
20 way, while the Court may take judicial notice of the existence of a document and its contents, it
21 may not take judicial notice of "the truthfulness of its contents or the interpretation of statements
22 contained therein, if those matters are reasonably disputable." (*Apple, Inc. v. Superior Court*
23 (2017) 18 Cal.App.5th 222, 241; see *StorMedia, Inc. v. Superior Court, supra*, 20 Cal.4th at p.
24 457, fn. 9; *Richtek USA, Inc. v. uPI Semiconductor Corp., supra*, 242 Cal.App.4th at p. 660.)

25 **B. Objection to Exhibit A – Text of Proposed Proposition 1, Proposed by**
26 **Senate Bill 1856 of the 2001-2002 Regular Session**

27 Respondents object Exhibit A to Petitioners' RJN, which is the text of proposed law
28 Proposition 1, proposed by Senate Bill 1856 of the 2001-2002 Regular Session, on the grounds
that it is not part of the ballot materials provided to voters in 2008 when they approved the Bond

1 Act, nor is there any evidence that it was provided to the voters in connection with that vote. It is,
2 therefore, irrelevant to voter intent. (See *Lorenzo Valley Community Advocates for Responsible*
3 *Education v. San Lorenzo Unified School District* (2006) 139 Cal.App.4th 1356, 1397 [holding
4 that only the statute, the school district resolution, and the ballot proposition were relevant to
5 voter intent in approving a bond measure]; *Associated Students of North Peralta Community*
6 *College v. Bd. of Trustees of Peralta Community College Dist.* (1979) 92 Cal.App.3d 672, 678-
7 679 [to the same effect].

8 Further, as legislation withdrawn by its authors before being submitted to the voters, it
9 never became effective. Therefore, it would not properly be subject to judicial notice, even if this
10 action involved a challenge to a legislative enactment that did not require voter approval (and it
11 does not). (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133
12 Cal.App.4th 26, 39 (hereafter “*Kaufman*”) [including bills withdrawn by author among list of
13 documents not constituting legislative history]; *Heavenly Valley v. El Dorado County Bd. of*
14 *Equalization* (2000) 84 Cal.App.4th 1323, 1342 [holding that court would draw no inference of
15 legislative intent from withdrawn bill].)

16 Moreover, Petitioners’ Brief cites the document as support for their assertion that the Bond
17 Act was originally intended for the 2004 ballot, but was twice delayed due to budget concerns.
18 (Petitioners’ Brief, p. 5, fn. 2.) That information is not found anywhere in Exhibit A.

19 Finally, if the Court decides to grant petitioners’ request for judicial notice of Exhibit A, it
20 should grant judicial notice of the whole Voter Guide for that proposed bond measure, not just the
21 excerpt with the text of the proposed law that petitioners have proffered. (See Respondents’
22 Request for Judicial Notice, Exh. 3.)

23 **C. Objection to Exhibit D – Assembly Bill 3034 as Introduced February 22,**
24 **2008**

25 Respondents object to Exhibit D to Petitioners’ RJN, the text of AB 3034, on the grounds
26 that it is not part of the ballot materials provided to voters, nor is there any other evidence that it
27 was provided to the voters in connection with their approval of the Bond Act, and therefore it is
28 irrelevant to voter intent. (*Lorenzo Valley Community Advocates for Responsible Education v.*

1 *San Lorenzo Unified School District, supra*, 139 Cal.App.4th at p. 1397; *Associated Students of*
2 *North Peralta Community College v. Bd. of Trustees of Peralta Community College Dist., supra*,
3 92 Cal.App.3d at pp. 678-679; see *City of Palo Alto v. Public Employment Relations Board*
4 (2016) 5 Cal.App.5th 1271, 1300, fn. 8.)

5 **D. Objection to Exhibit E – Assembly Committee on Transportation Report –**
6 **Hearing Date April 14, 2008.**

7 Respondents object to Exhibit E to Petitioners' RJN, Assembly Committee on
8 Transportation Report – Hearing Date April 14, 2008, on the grounds that it is not part of the
9 ballot materials provided to voters, nor is there any other evidence that it was provided to the
10 voters in connection with their approval of the Bond Act, and therefore it is irrelevant to voter
11 intent. (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified*
12 *School District, supra*, 139 Cal.App.4th at p. 1397; *Associated Students of North Peralta*
13 *Community College v. Bd. of Trustees of Peralta Community College Dist., supra*, 92 Cal.App.3d
14 at pp. 678-679; see *City of Palo Alto v. Public Employment Relations Board, supra*, 5
15 Cal.App.5th at p. 1300, fn. 8.)

16 **E. Objection to Exhibit F – Excerpt from the Governor's Interim Budget**
17 **Report May Revision 2008-09.**

18 Respondents object to Exhibit F to Petitioners' RJN, an excerpt from the Governor's
19 Interim Budget Report May Revision 2008-09, on the grounds that it was not part of the ballot
20 materials provided to voters, nor is there any other evidence that it was provided to the voters in
21 connection with their approval of the Bond Act, and therefore it is irrelevant to voter intent.
22 (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified School*
23 *District, supra*, 139 Cal.App.4th at p. 1397; *Associated Students of North Peralta Community*
24 *College v. Bd. of Trustees of Peralta Community College Dist., supra*, 92 Cal.App.3d at pp. 678-
25 679; see *City of Palo Alto v. Public Employment Relations Board, supra*, 5 Cal.App.5th at p.
26 1300, fn. 8].)

27 Moreover, Exhibit F would not properly be subject to judicial notice, even if this action
28 involved a challenge to a legislative enactment that did not require voter approval (and it does
not). The document is an excerpt from a revised proposed budget (not the final budget report),

1 and contains a brief mention of amendments that the “Administration will be proposing” to
2 Assembly Bill 3037 [Reg. Sess. 2007-2008], the Safe Reliable High-Speed Passenger Train Bond
3 Act for the 21st Century. Petitioners have cited no authority for the proposition that Executive
4 Branch statements about amendments to pending legislation that the Executive Branch
5 *contemplates* presenting to the Legislature are properly part of the legislative history of a statute.
6 (Cf. *Kaufman, supra*, 133 Cal.App.4th at pp. 31-37 [listing documents constituting cognizable
7 legislative history].) Nor have petitioners presented any evidence that the document was in fact
8 considered by the Legislature in connection with its passage of the Bond Act. (See *Cortez v.*
9 *Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 168, fn. 2 [holding that documents
10 are not judicially noticeable as legislative history where there is no indication the documents were
11 considered by the Legislature].) Therefore, *assuming arguendo* that an excerpt from an interim
12 draft budget report could be deemed an official executive act, it is not subject to judicial notice as
13 evidence of the Legislature’s intent in enacting AB 3034, much less the voters’ intent in
14 approving the Bond Act.

15 The authority petitioners cite in support of their request for judicial notice of this document,
16 *Professional Engineers in California Government v. Brown* (2014) 229 Cal.App.4th 861, 867,
17 footnote 3, in no way supports the notion that a statement by the Governor of what he hopes to be
18 enacted by the Legislature is evidence of legislative intent. In *Professional Engineers, supra*, the
19 litigation involved an Executive Order issued by the Governor in connection with a state budget
20 matter. The court took judicial notice—without discussion, and without apparent objection—of
21 Department of Finance publications summarizing the state budget and the Budget Act for the
22 prior year, including the Governor’s veto messages. (See *ibid.*) Here, AB 3034 is a stand-alone
23 statute, not part of the 2008 Budget Act, and this lawsuit does not require interpretation or
24 analysis of an Executive Order issued by the Governor.

25 Finally, petitioners do not cite the document merely for its existence and contents, but as
26 support for sundry unfounded inferences petitioners ask the court to make, for example, that the
27 funding plan requirements in the Bond Act “implemented Governor Schwarzenegger’s intent
28 expressed in his May 2008 budget revision, of showing voters that bond money would not be

1 spent on construction until it could be objectively demonstrated, through expert reports, that there
2 were sufficient funds available to fully construct an operational high-speed rail segment”
3 (Petitioners’ Brief, p. 7), and that Senate Transportation and Housing Committee amendments to
4 AB 3034 “were prompted by the Governor’s concern with voter skepticism about the measure.”
5 (*Id.* at pp. 17-18.)

6 Finally, if the Court decides to grant petitioners’ request for judicial notice, it should grant
7 judicial notice of the entire document, not just the excerpt that petitioners have proffered. (See
8 Respondents’ Request for Judicial Notice., Exh. 4.)

9 **F. Objection to Exhibit G – AB 3034 as Amended in the Senate June 26,**
10 **2008.**

11 Respondents object to Exhibit G to Petitioners’ RJN, AB 3034 as Amended in the Senate
12 June 26, 2008, on the grounds that it is not part of the ballot materials provided to voters, nor is
13 there any other evidence that it was provided to the voters in connection with their approval of the
14 Bond Act, and therefore it is irrelevant to voter intent. (*Lorenzo Valley Community Advocates for*
15 *Responsible Education v. San Lorenzo Unified School District*, *supra*, 139 Cal.App.4th at p.
16 1397; *Associated Students of North Peralta Community College v. Bd. of Trustees of Peralta*
17 *Community College Dist.*, *supra*, 92 Cal.App.3d at pp. 678-679; see *City of Palo Alto v. Public*
18 *Employment Relations Board*, *supra*, 5 Cal.App.5th at p. 1300, fn. 8.)

19 **G. Objection to Exhibit H – Senate Committee on Transportation & Housing**
20 **Report – Hearing Date July 1, 2008**

21 Respondents object to Exhibit H to Petitioners’ RJN, the Senate Committee on
22 Transportation & Housing Report – Hearing Date July 1, 2008, on the grounds that it is not part
23 of the ballot materials provided to voters, nor is there any other evidence that it was provided to
24 the voters in connection with their approval of the Bond Act, and therefore it is irrelevant to voter
25 intent. (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified*
26 *School District*, *supra*, 139 Cal.App.4th at p. 1397; *Associated Students of North Peralta*
27 *Community College v. Bd. of Trustees of Peralta Community College Dist.*, *supra*, 92 Cal.App.3d
28 at pp. 678-679; see *City of Palo Alto v. Public Employment Relations Board*, *supra*, 5
Cal.App.5th at p. 1300, fn. 8.)

1 **H. Objection to Exhibit I – California Legislative Information Website Tool**
2 **Comparing the June 26, 2008 Version of AB 3034 with the Bill as**
3 **Introduced on February 22, 2008**

4 Respondents object to Exhibit I to Petitioners' RJN, California Legislative Information
5 Website Tool Comparing the June 26, 2008 Version of AB 3034 with the Bill as Introduced on
6 February 22, 2008, on the grounds that it is not part of the ballot materials provided to voters, nor
7 is there any other evidence that it was provided to the voters in connection with their approval of
8 the Bond Act, and therefore it is irrelevant to voter intent. (*Lorenzo Valley Community Advocates*
9 *for Responsible Education v. San Lorenzo Unified School District, supra*, 139 Cal.App.4th at
10 p. 1397; *Associated Students of North Peralta Community College v. Bd. of Trustees of Peralta*
11 *Community College Dist., supra*, 92 Cal.App.3d at pp. 678-679; see *City of Palo Alto v. Public*
12 *Employment Relations Board, supra*, 5 Cal.App.5th at p. 1300, fn. 8.)

13 Moreover, the document does not support the contention for which petitioners cite it, which
14 is that the language of AB 3034 changed between the time the Governor's interim budget report
15 was issued in May 2008 and when the measure was amended on June 26, 2008. (See Petitioners'
16 Brief, pp. 8, 22) since the document purports to be marked to show changes, not from an interim
17 version immediately preceding the Governor's report, but instead to show all amendments since
18 the bill was first introduced in February 2008.¹

19 **I. Objection to Exhibit Q – Enrolled Bill Memorandum to the Governor from**
20 **the Office of Planning and Research**

21 Respondents object Exhibit Q to Petitioners' RJN, the Enrolled Bill Memorandum to the
22 Governor from the Office of Planning and Research, on the grounds that it is not part of the ballot
23 materials provided to voters, nor is there any other evidence that it was provided to the voters in
24 connection with their approval of the Bond Act, and therefore it is irrelevant to voter intent.

25 ¹ Respondents note that the comparison tool on the California Legislative Information
26 website is not error-free, as petitioners argue. (Petitioners' RJN, p. 7 [arguing that because the
27 comparison is done by the California Legislature's own website, it should be considered to be of
28 reasonably indisputable accuracy].) When used to compare the final chaptered version of AB
34&cversion=20070AB303496AMD.)

1 (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified School*
2 *District, supra*, 139 Cal.App.4th at p. 1397; *Associated Students of North Peralta Community*
3 *College v. Bd. of Trustees of Peralta Community College Dist., supra*, 92 Cal.App.3d at pp. 678-
4 679; see *City of Palo Alto v. Public Employment Relations Board, supra*, 5 Cal.App.5th at p.
5 1300, fn. 8.)

6 Indeed, as an enrolled bill memorandum from the Office of Planning and Research—an
7 agency that has no role in administering or enforcing the Bond Act—the document would be of
8 no value even as to ascertaining the Legislature’s own intent. (See *Kaufman, supra*, 133
9 Cal.App.4th at pp. 41-42 [recognizing Supreme Court authority allowing consideration of
10 enrolled bill reports, but stating that because the reports are prepared by the executive branch for
11 the Governor after the Legislature has passed a bill, they cannot reflect the intent of the
12 Legislature]). While the Supreme Court has indicated that enrolled bill memoranda *prepared by*
13 *an agency with a role in administering or enforcing a statute* may have some relevance, an
14 enrolled bill memorandum by the Office of Planning and Research, which has no role in
15 administering the Bond Act, has none. (See *Association of California Ins. Companies v. Jones*
16 (2017) 2 Cal.5th 376, 395–396 [rejecting judicial notice of an enrolled bill report prepared by the
17 Department of Finance, because the Department of Finance “has no role in administering or
18 enforcing” the statute at issue in that case]; cf. *Siskiyou County Farm Bureau v. Department of*
19 *Fish & Wildlife* (2015) 237 Cal.App.4th 411, 441 [even if judicially noticeable under existing
20 precedent, enrolled bill reports are not probative of the intent of the Legislature].)

21 **J. Objection to Exhibit R – Letter from One of the Petitioners to the**
22 **Governor Urging That the Governor Sign AB 3034**

23 Respondents object Exhibit R to Petitioners’ RJN, a letter from petitioner Quentin Kopp to
24 the Governor Schwarzenegger urging him to sign the bill, on the grounds that it is not part of the
25 ballot materials provided to voters, nor is there any other evidence that it was provided to the
26 voters in connection with their approval of the Bond Act, and therefore it is irrelevant to voter
27 intent. (*Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Unified*
28 *School District, supra*, 139 Cal.App.4th at p. 1397; *Associated Students of North Peralta*

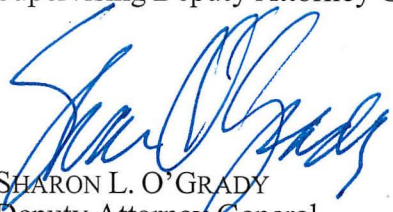
1 *Community College v. Bd. of Trustees of Peralta Community College Dist.*, *supra*, 92 Cal.App.3d
2 at pp. 678-679; see *City of Palo Alto v. Public Employment Relations Board*, *supra*, 5
3 Cal.App.5th at p. 1300, fn. 8.)

4 Indeed, the document is not relevant as to even the Legislature's own intent. Letters urging
5 signing of a bill do not constitute legislative history. (*Kaufman*, *supra*, 133 Cal.App.4th at p. 38;
6 *California Teachers Assn v. San Diego Community College Dist.* (1981) 692 Cal.3d 692, 701;
7 *Heavenly Valley v. El Dorado County Bd. of Equalization*, *supra*, 84 Cal.App.4th at p. 1327,
8 fn. 2). Such documents do not reflect the intent of the Legislature as a whole, particularly where,
9 as here, the letter was sent after the Legislature had passed the measure. (See *Kaufman*, *supra*,
10 133 Cal.App.4th at pp. 29, 37-38.)²

11 Dated: August 30, 2018

Respectfully Submitted,

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16 
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22 Director of the Department of Finance, and
23 the State of California

24 SA20161048

25 ² *Galanty v. Paul Revere Life Ins. Co.* (2000) 23 Cal.4th 368, 381 fn. 24, petitioners' cited
26 authority, is inapposite. That case involved the effect of a model incontestability clause
27 formulated by the National Association of Insurance Commissioners, which California (and other
28 states) required be included in all disability insurance policies. (*Id.* at pp. 371-372.) Half a
century later, courts in California and elsewhere were divided as to the scope of the provision,
and—at the request of an amicus curiae, with no indication of any objection—the Supreme Court
took judicial notice of a 1951 letter from the then-Insurance Commissioner who had participated
in the Commission that prepared the model clause. (*Id.* at pp. 377-378, 381 & fn. 24.)

DECLARATION OF SERVICE

Case Name: **Tos, John, et al. v. California High-Speed Rail Authority (Tos II)**

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.


On August 30, 2018, I served the attached **RESPONDENTS' OBJECTIONS TO PETITIONERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS**, 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 August 30, 2018, at San Francisco, California.

Susan Chiang
Declarant



Signature