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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35724

CALIFORNIA HIGH-SPEED RAIL AUTHORITY
--CONSTRUCTION EXEMPTION--
IN MERCED, MADERA AND FRESNO COUNTIES, CALIFORNIA

**OPPOSITION OF COUNTY OF KINGS TO
PETITION FOR EXEMPTION FROM CONSTRUCTION PERMIT
BY THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

Protestant:

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By its Board of Supervisors
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Dated: May 8, 2013

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The County of Kings, a political subdivision of the State of California, thanks the Surface Transportation Board for asserting jurisdiction over the initial construction segment of the California high speed rail project and moves the Surface Transportation Board (“STB”) to deny the California High Speed Rail Authority’s (“CHSRA”) petition for exemption from construction permit and mandate that a construction permit be obtained.

The County of Kings will be hugely impacted by the Authority’s poorly planned project. The County has attempted tirelessly to communicate and coordinate with the Authority regarding these concerns. A snapshot of these efforts follows. By this protest and comment letter we urge the STB to slow the madness down and insist the Authority thoroughly address the safety and legal concerns raised to date. Many of the concerns raised by the County for the Fresno to Bakersfield segment, apply equally to the Merced to Fresno segment, of which Kings County was previously a part. Therefore, even though the comments may not appear to be specifically pertinent to the 29-mile segment at issue, they are relevant and hopefully useful in determining the scope of your investigation into the project.

Summary:

KINGS COUNTY'S AWARD WINNING PLANNING POLICIES

- January 26, 2010 -- Kings County adopted its award winning 2035 General Plan (Kings County received an "Award of Achievement" for Community Plans - Unincorporated Community, and an "Award of Merit" for Sustainable Development Policies from the San Joaquin Valley Policy Council);

KINGS COUNTY'S SUPPORT OF HIGH SPEED RAIL

- May 25, 2010 – Kings County adopted Resolution 10-033 supporting high speed rail, with a unified Central Valley approach along existing transportation corridors;

ROELOFF VAN ARK'S HOLLOW COMMITMENT TO AGRICULTURE

- February 25, 2011 – CHSRA press release statement of Roeloff Van Ark: *"I'm committed to working with the agricultural community to develop win-win solutions. I will not remain in my office, rather I will be out here - in communities throughout the State and in the Valley, meeting with you, with agricultural groups and working together"* (this proved to be a false statement at least with respect to Kings County);

KINGS COUNTY'S ATTEMPT TO COORDINATE THE PROJECT AND RESOLVE CONFLICTS

- March 4, 2011 – Kings County Board of Supervisors wrote to Roeloff Van Ark expressing concern regarding impacts and seeking coordination;
- March 29, 2011 – Roeloff Van Ark wrote to County thanking it for its interest in the project but declining to meet to coordinate and directing the County instead to its Area Program Manager for the Central Valley;
- April 19, 2011 – CHSRA representatives appeared at County's scheduled coordination meeting, received hours of testimony regarding concerns and impacts, but refused to acknowledge coordination or discuss resolution of project conflicts and instead directed the County to the environmental review process;
- May 5, 2011 – CHSRA Chairman Pringle demeaned Kings County Farm Bureau Executive Director when she attempted to call attention to the lack of coordination;
- May 17, 2011 – CHSRA Area Program Manger for the Central Valley ignored the request for a follow-up coordination meeting where he was to bring solutions to conflicts raised at the April 19, 2011 multi-hour meeting and instead indicated "[i]f there are issues of particular interest that you wish to discuss, please advise ... "
- June 7, 2011 – CHSRA Program Manager again appeared before the Kings County Board of Supervisors and refused to coordinate, but assured the Board that all its concerns would be addressed in the environmental document;
- August 2, 2011 – Kings County Board of Supervisors wrote to Federal Railroad Administration, co-lead agent of the project, and requested it coordinate because CHSRA refused;
- August 12, 2011 – CHSRA released the Draft EIR/EIS which was posted in the Federal Register;
- August 25, 2011 – Kings County Board of Supervisors wrote to Governor Brown outlining disappointment with CHSRA and lodging a plea for help from the Governor.

- September 12, 2011 – Federal Railroad Administration Administrator, Joseph Szabo responded to the County’s request for coordination by recounting the environmental process, referring the County to the Draft EIR/EIS and thanking the County for its interest in the project. The response failed to address the County’s coordination request and all of its concerns;
- October 12, 2011 -- Kings County Board of Supervisors submitted comments on the Fresno to Bakersfield Project Draft EIR/EIS which outlined unresolved concerns and issues with HSR plans through Kings County;
- November 2, 2011 -- Kings County Board of Supervisors sent a letter to Federal Railroad Administration Administrator, Joseph Szabo. It contained a 26 page history of attempted coordination and reiterated the unresolved issues with the CHSRA plans through Kings County;
- January 31, 2012 – Kings County Board of Supervisors wrote again to Governor Brown seeking a response to its August 25, 2011 correspondence and again asking for assistance in coordinating with the CHSRA and co-lead agent, Federal Rail Administration (“FRA”);
- February 3, 2012 – New CHSRA Chairman Dan Richard wrote to Kings County Board of Supervisors to let them know their prior comments and suggestions “do not fall on deaf ears” and suggesting a new era of ability to work collaboratively.
- February 9, 2012 – Kings County Board of Supervisors wrote to CHSRA Chairman Dan Richard accepting his invitation to meet in person and coordinate the Project;
- April 3, 2012 – CHSRA Chairman Dan Richard acknowledged Kings County’s May, 2011 letter to the CHSRA outlining 61 conflicts/issues and seeking resolution. Mr. Richard indicated: *“It is with great chagrin that I say to you something you already know, which is that those questions were never responded to by the High Speed Rail Authority. So let’s just get that out right here. That certainly was not a proper way in which we needed to interact with either you or this community that you represent. So I want to acknowledge that, because it was wrong, and I want to try to see where we can start from here.”* (Pages 18-19 of transcript of April 4, 2012 meeting between Mr. Richard and Kings County Board of Supervisors) Mr. Richard continued by admitting that a lot of the issues are “highly technical” and agreed to work with Kings County to address those issues before the environmental document is re-released stating that at that point it “gets very formal”. Finally, he admitted that “..we stubbed our toe a little bit in the past.” (Pages 20-22 of 4-4-12 meeting). The agreed process was to have technical meetings with CHSRA staff which were transcribed by a court reporter and then the staff of Kings County would report to both Mr. Richard and the Kings County Board of Supervisors regarding the outcome and progress of those meetings. CHSRA staff would show up and listen, but were disorganized and never actually resolved any issues raised consistently by the County;
- May 4, 2012 – County and CHSRA staff met to reiterate unresolved issues (which had been detailed in advance correspondence) and to begin technical discussions;
- May 8, 2012 – County staff reported to Kings County Board of Supervisors and Mr. Richard regarding 5-4-12 technical meeting;
- June 4, 2012 -- County and CHSRA staff met to reiterate unresolved issues (which had been detailed in advance correspondence) and to begin technical discussions;

- June 12, 2012 – County staff reported to Kings County Board of Supervisors and Mr. Richard regarding 6-4-2012 technical meeting. Staff expressed its frustration at lack of any progress as follows: “The technical meetings of May 4th and June 4th of 2012 have allowed Kings County staff to review with Authority staff and consultants groupings of unanswered questions or generalized answers, but to date has not resulted in the resolution of even one of the project’s conflicts with Kings County’s 2035 General Plan.” (Pages 5-6 of transcript of June 12, 2012 meeting between Mr. Richard and Kings County Board of Supervisors). Staff went on to detail the major outstanding issues that have yet to be addressed. Mr. Richard indicating that he is working on two specific major issues affecting Kings County: dairy re-permitting streamlining and the potential loss of Amtrak. He specifically indicated: “It’s my hope that within the next couple of weeks I can come back with a more specific process, but I actually have had those conversations about organizing a sort of a task force,...that could work with the County to – to really start to get into those issues in detail.” (pages 32-33 of 6-12-12 transcript). We have been apprised of no progress on these issues since that date.
- June 27, 2012 – Kings County Administrative Officer, Larry Spikes, wrote to Chairman Richard to report frustration with the lack of progress and failure of communication.

KINGS COUNTY’S EXASPERATION WITH CHSRA AND OPPOSITION TO HIGH SPEED RAIL

- October 18, 2011 – Kings County Board of Supervisors Adopted Resolution 11-065 rescinding prior support of the project and opposing it in its entirety based on CHSRA’s “lack of transparency, failure to coordinate and resolve impacts, ignorance of the will of the people expressed in Prop. 1A and its ‘act now, ask forgiveness later’ approach to the Project”;

GROWING OPPOSITION OF CALIFORNIANS AND GOVERNMENTAL SUBDIVISIONS OF THE STATE

- Numerous political subdivisions and special districts in the State have come out in opposition to the Project;
- May 10, 2011 -- the Legislative Analyst’s office identified numerous problems that threaten the project’s success and called for legislative intervention to improve its likelihood of success;
- November 14, 2011 -- a lawsuit was filed by Kings County and taxpayers Jon Tos and Aaron Fakuda, to prevent CHSRA’s illegal use of Proposition 1A funding;
- December 6, 2011 -- Field Research Corporation issued results of its public opinion poll that found that 64% of those surveyed want another public vote on the \$98-billion project and that 59% would oppose because of changes in its cost and completion date;
- December 15, 2011 – U.S. House Committee on Transportation and Infrastructure Chairman, John L. Mica, held a hearing on “California’s High Speed Rail Plan: Skyrocketing Costs and Projects Concerns”;
- Congress eliminated high speed rail funds requested for 2012;
- January 3, 2012 -- a negative report to the State Legislature was issued by the Prop. 1A commissioned Peer Group. The report indicated: "We cannot overemphasize the fact that moving ahead on the (high-speed rail) without credible sources of adequate funding,

without a definitive business model, without a strategy to maximize the independent utility and value to the state, and without the appropriate management resources, represents an immense financial risk on the part of the State of California.”;

- January, 2012 – the State Auditor issued a report on the troubled high-speed rail project, and indicated the CHSRA had addressed some of its prior concerns, but outlined a funding situation that “has become increasingly risky”, identified persistently “weak oversight” and insufficient and unqualified staffing, and violation of state rules prohibiting agencies from splitting contracts to avoid competitive bidding; and
- January 12, 2012 – CHSRA Chairman Umber and Executive Director Van Ark resigned.

The CHSRA has extracted a tiny segment of a statewide project that is ultimately designed to connect to interstate transportation. This narrow piecemeal approach to one of the largest transportation projects in the State’s history is misleading, lacks relevant information and is contrary to State law.

CHSRA’s request for expedited consideration places an extraordinary burden on the interested public and affected public agencies and should be denied, particularly since the CHSRA has acknowledged since at least October 1, 2009 that it must address potential STB jurisdiction¹ It seemingly became urgent only five weeks ago when Congressman Denham called the problem to the Authority’s and STB’s attention.²

I.

STATEMENT OF FACTS

California’s rail system combines intercity, commuter, and freight rail. “Intercity rail includes state-supported corridor routes and Amtrak long-distance routes. All three systems share the same infrastructure that is generally owned by private railroads, and in some cases, public entities.”³

¹ See Authority’s Merced to Fresno HSR Design/Build Application, wherein it states: “... CHSRA will address potential jurisdiction of the Surface Transportation Board (STB) over any aspect of the HST project and work to ensure timely completion [of] all prospective regulatory oversight responsibilities consistent with the project delivery schedule.”

http://www.cahighspeedrail.ca.gov/fed_stimulus.aspx.

² See Congressman’s Denham’s attached letter

³ See California State Rail Plan 2007-08 to 2017-18, Chapter 5 (The California Rail Network), Page 79.

“Amtrak funds and operates “basic system” long-distance (usually interstate) rail routes. Four long-distance routes operate in California (*Coast Starlight, California Zephyr, Southwest Chief, and Sunset Limited*). The State funds three State-supported intercity rail routes. The Department administers the *Pacific Surfliners* and *San Joaquins* and the CCJPA administers the *Capitol Corridor*. Amtrak operates these routes under contract with either the State or the CCJPA... .”⁴ “Currently, Amtrak operates long-distance trains on five routes in California that link California with other states.”⁵

The *California High Speed Rail Act*⁶ directs the CHSRA to develop and implement a “...high speed rail service that is fully integrated with the state’s existing intercity rail and bus network, consisting of interlinked conventional and high-speed rail lines and associated feeder buses. The intercity network in turn shall be fully coordinated and connected with commuter rail lines and urban rail transit lines developed by local agencies, as well as other transit services, through the use of common station facilities whenever possible.”⁷ The high speed train network plan “shall include an appropriate network of conventional intercity passenger rail service and shall be coordinated with existing and planned commuter and urban rail systems.”⁸

The California High Speed Rail project is part of President Obama’s plan unveiled on April 16, 2009 to develop a national network of high-speed passenger rail lines in 10 key transportation corridors across the United States from California and the Pacific Northwest to the Gulf Coast and New England. The initial investment in such system came from the President’s 787 billion economic stimulus package (the Americans Recovery and Reinvestment Act referred to as “ARRA”). See vision image below.⁹

Image Credit: The White House

⁴ IBID

⁵ See California State Rail Plan 2007-08 to 2017-18, Chapter 5 (The California Rail Network), Page 85.

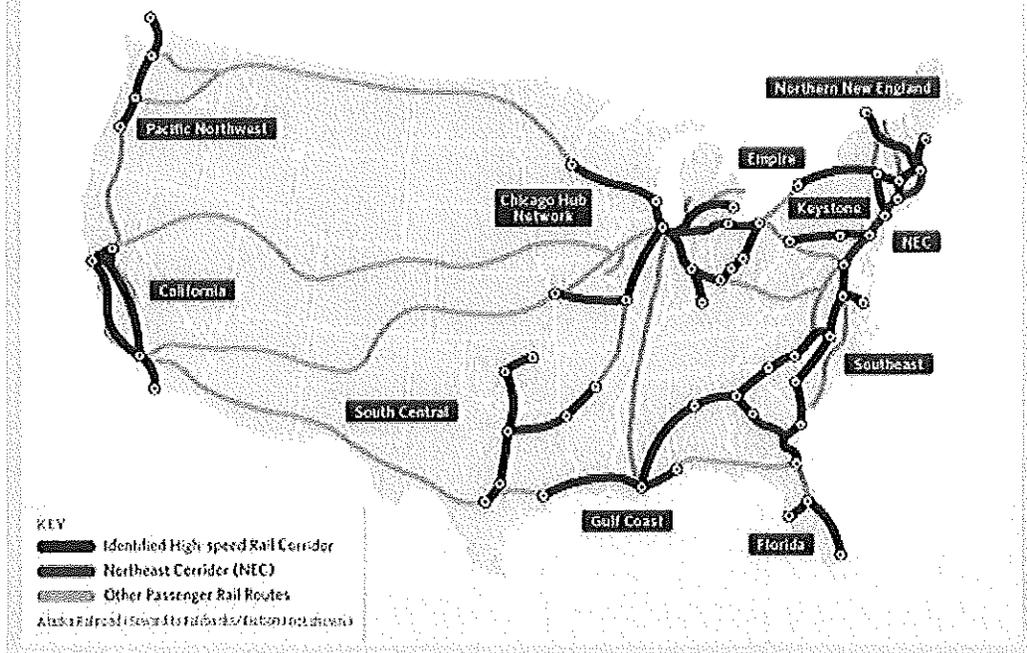
⁶ California Public Utilities Code section 185000, et seq.

⁷ California Public Utilities Code section 185030

⁸ California Public Utilities Code section 185032

⁹ <http://www.whitehouse.gov/blog/2009/04/16/a-vision-high-speed-rail>

VISION for HIGH-SPEED RAIL in AMERICA



California's high speed rail project is a joint project of the California High Speed Rail Authority and the Federal Railroad Administration. It is funded by both ARRA and the proceeds of nine billion dollars in bonds to be authorized pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Prop. 1A).¹⁰

II.

CONCURRENCE WITH STB'S ASSERTION OF JURISDICTION

STB has exclusive jurisdiction over "transportation by rail carrier" and formally asserted jurisdiction on April 18, 2013. CHSRA stipulates its Project will constitute transportation by rail carrier¹¹ (49 U.S.C. 10501). Such jurisdiction applies only to transportation in the United

¹⁰ The Act is referred to as Proposition 1A, AB 3034 (2008), and codified in California Streets and Highways Code Section 2704, et seq.

¹¹ (See CHSRA Petition, P. 5, fn 10: "The Authority stipulates that the Project will constitute 'transportation by rail carrier,' as understood by 49 U.S.C. § 10501. ... (citation omitted).")

States between a place in a State and a place in the same or another State as part of the interstate rail network (49 U.S.C. 10501(a)(2)(A).)

STB's exclusive jurisdiction Under 49 U.S.C. 10501(b)(2), as broadened by ICCTA, extends to and includes "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks or facilities, even if the tracks are located, or intended to be located entirely in one State."

49 U.S.C. Section 10501(b) further provides that both "the jurisdiction of the Board over transportation by rail carriers" and "the remedies provided under [49 U.S.C. 10101-11908] are exclusive and preempt the remedies provided under Federal or State law." See *City of Auburn v. STB*, 154 F.3d 1025, 1029-31 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999) (*City of Auburn*).

A. THE MERCED-FRESNO (REALLY MADERA TO FRESNO) INITIAL CONSTRUCTION SEGMENT IS PART OF AN OVERALL 800-MILE STATEWIDE HIGH SPEED RAIL SYSTEM PLAN THAT WILL HAVE INTERMODAL CONNECTIVITY WHICH WILL PUT PASSENGERS INTO INTERSTATE COMMERCE

The CHSRA's Revised Business Plan¹² (April, 2012) describes a statewide high speed rail system with intermodal connectivity using a combination of new track and track that blends with the BNSF line to the north and south of the "spine" (the Central Valley 130 mile portion of new track). Blending with existing tracks will be accomplished through upgrading existing systems. Importantly, this "blending" approach violates Prop. 1A. See discussion below. A key change from the CHSRA's prior Business Plan is the commitment to a blended system. In sum, the change "[f]ocuses new high-speed infrastructure development between the state's metropolitan regions while using, to the maximum extent possible, existing regional and commuter rail systems in urban areas." (*See Business Plan*, pES-3.) The plan further indicates that "[t]hrough collaborative planning and implementation with the California Department of Transportation (Caltrans), Amtrak, Altamont Commuter Express (ACE), BNSF Railway, and

¹² http://www.cahighspeedrail.ca.gov/Business_Plan_reports.aspx

Union Pacific, the San Joaquin rail service (fifth busiest in the nation) will be shifted to the first construction segment upon its completion, resulting in a 45-minute time savings; through complementary improvements, this will tie with ACE to provide new, expanded, and improved rail services throughout northern California, connecting the Central Valley with the San Francisco Bay Area and Sacramento regions.” (See Business Plan, pES-3.)

Amtrak operations are being planned: “Planning for early interim service on the IOS [initial operating segment] is already underway, with the goal of commencing Amtrak operations as soon as possible after construction is complete in 2017. The Authority is already collaborating with its transportation partners to identify and address the technical and policy issues that would be associated with developing early service. Through this process, agreements will be worked out on a range of issues, including how and where the service would operate, how it would be integrated with other systems, and how to transition to revenue HSR service as the IOS is completed.” (See Business Plan p2-14.)

The statewide plan requires multi-jurisdictional cooperation and integration with existing rail. “Given the complex, multi-jurisdictional nature of this program, many interface agreements and integration risks exist associated with both construction and operation activities. For example, a system integration and interface risk exists related to the UPRR and BNSF. Other entities also will have an interface with the program, including Caltrain, Amtrak, Caltrans, and other local transportation and transit agencies. This includes the joint use of ROW and the joint use of stations and ancillary facilities with other rail operators and local transit agencies. [¶] Important to the success of the program is its integration within a larger statewide rail and transportation strategy. The program must integrate with and support local transportation systems to allow travelers to move long distances and then within metropolitan areas to their destinations. **The program must be part of a larger statewide strategy for transportation that includes airports and highways to allow efficient investment of transportation funds.**

The Authority must be an active participant within the larger statewide transportation planning structure.” (See Business Plan, p8-14; Bold emphasis added.)

As part of its blended approach, CHSRA conducted a benefit-cost analysis and among its 22 “benefit categories” concluded: “Most benefits accumulate within California, **although if the system were to be connected to other regional high-speed rail networks currently planned, the benefits would increase and extend to other parts of the United States.** (See Business Plan, p9-8; Bold emphasis added.)

B. ANY PORTION OF THE INITIAL OPERATING SEGMENT FUNDED BY ARRA MUST HAVE INDEPENDENT UTILITY

The initial construction segment described by Petitioners is funded through the federal High-Speed Intercity Passenger Rail (“HSIPR”) Program through the American Recovery and Reinvestment Act (“ARRA”) and matching state bond funds resulting from a voter initiative (Prop. 1A). The ARRA funding mandates that projects using ARRA funding have “independent utility” in the event the project were not fully funded.

The HSIPR Interim Program Guidance¹³ defines “independent utility” at Section 2.2 as follows: “Independent Utility—A project, group of projects, or Service Development Program (or phase of a Service Development Program) is considered to have independent utility if it will result, upon completion, in the creation of new or substantially improved High-Speed Rail/Intercity Passenger Rail service, and will provide tangible and measurable benefits even if no additional investments in the same High-Speed Rail/Intercity Passenger Rail service are made. Typical examples of these benefits would include on-time performance improvements, travel-time reductions, and higher service frequencies resulting in increased ridership.”

CHSRA’s Merced-Fresno Section FEIR/FEIS responded to inquiries about the Project’s independent utility as follows: “The first section of the California HST System requires a section

¹³ See Federal Register / Vol. 74, No. 119 / Tuesday, June 23, 2009 / Notices; <http://www.gpo.gov/fdsys/pkg/FR-2009-06-23/pdf/E9-14692.pdf>

of over 100 miles of high speed track to test the High-speed trains. The Central Valley is the best location for this initial phase. ... The ICS could accommodate non-electrified passenger trains (e.g. Amtrak San Joaquin service) from the north and existing stations in Merced and Madera via a crossover trackway with the BNSF railroad (at Avenue 17 near Madera) to Bakersfield in the south if the Authority's Preferred Alternative were selected, even if no other portion of the HST System is constructed. [¶] Independent utility under ARRA could be achieved by allowing non-electrified passenger trains to utilize the ICS. ... Such interim service is undefined at present ... * * * [¶]. [¶] The Authority has met the ... 'independent utility' by stipulating in the funding agreement that the ICS must be capable of being connected to existing infrastructure for use of its infrastructure by other operators in the event that the HST does not go into operation.¹⁴”

Petitioner admits that your Board has jurisdiction over the construction of rail lines that will be used by entities providing passenger rail service as part of the interstate rail network, including entities other than the constructing party, and admits that Amtrak could be in such a position through the independent utility requirement and relating ARRA funding agreement, it asserts that jurisdiction is not achieved because the CHSRA does not have “through ticketing” agreements with Amtrak or other providers (Petition, p6). Petitioner cites *All Aboard Florida*¹⁵ at p.3-4 as support for this position; however, *All Aboard Florida* is distinguishable. In that matter, the Florida line had no connections with Amtrak or other passenger rail providers. On the

¹⁴ See Merced to Fresno Final EIR/EIS pg 16-27, Comment Summary, MF-Response-GENERAL-13..., <http://www.cahighspeedrail.ca.gov/draft-eir-m-f.aspx> (NOTE: The environmental document is the subject of two consolidated lawsuits: 1. County of Madera, et al. vs. California High Speed Rail Authority, et al. (Sacramento Superior Court Case No. 34-2012-80001166-CU-WM-GDS), and 2. City of Chowchilla, Timeless Investment, Inc., et al. vs. California High Speed Rail Authority, et al. (Sacramento Superior Court Case No. 34-2012-80001168-CU-WM-GDS). It has also been recently reported that the Madera County action has or will be dismissed due to a vacancy created on the Board of Supervisors which was filled by a Governor Brown appointment which was followed by a recent vote to reverse the County's involvement. These matters are in the final briefing stage. A primary argument is that the programmatic environmental document it tiers off of has been invalidated.

¹⁵ See *All Aboard Fla. – Operations LLC & All Aboard Fla. – Stations—Construction and Operation Exemption—In Miami, Fla and Orlando, Fla.*, STB Finance Docket No. 35680, slip op. (STB served Dec. 21, 2012) (“All Aboard Florida”).

contrary, CHSRA's 2012 Revised Business Plan boasts of its *blended systems* and *blended operations*, which are the integration of high-speed trains with Amtrak's existing intercity rail lines and regional commuter rail systems via coordinated infrastructure and scheduling, ticketing, and other means¹⁶. In fact, CHSRA's plan shows that it will connect with Amtrak's three popular rail lines in California: The Capitol Corridor, San Joaquin Valley, and Pacific Surfliner lines, each of which carries millions of passengers per year. (Even though Amtrak's three intercity passenger rail lines operate entirely within California, they would be considered part of the interstate rail network because they connect with other Amtrak lines that provide travel across state lines¹⁷).

III.

**THE AUTHORITY'S PROJECT SHOULD NOT BE EXEMPTED AND
LICENSURE SHOULD BE WITHHELD UNTIL THE PROJECT IS
RECONCILED WITH THE STATUTORY REQUIREMENT THAT IT
BE CONSISTENT WITH PUBLIC CONVENIENCE AND NECESSITY**

The STB shall issue licensing for the Authority's proposed project "unless the Board finds that such activities are inconsistent with the public convenience and necessity..." (49 U.S.C. §10901.) The County urges the STB to withhold such issuance because the Authority's project conflicts with this mandatory threshold. It will harm existing transportation systems, constituents of Kings County, and taxpayers of the State of California. The Authority's plan is haphazard, inconsistent, and driven by short term funding – not public convenience or necessity. Further, this "plan" involves corner cutting and other maneuvers which violate the very statute that promotes such system (Proposition 1A - 2008). It is contrary to the promotion of safe and efficient rail transportation and sound economic decision making required by U.C.S. §10101(3) and (4).

¹⁶ See Business Plan, p.2-1.

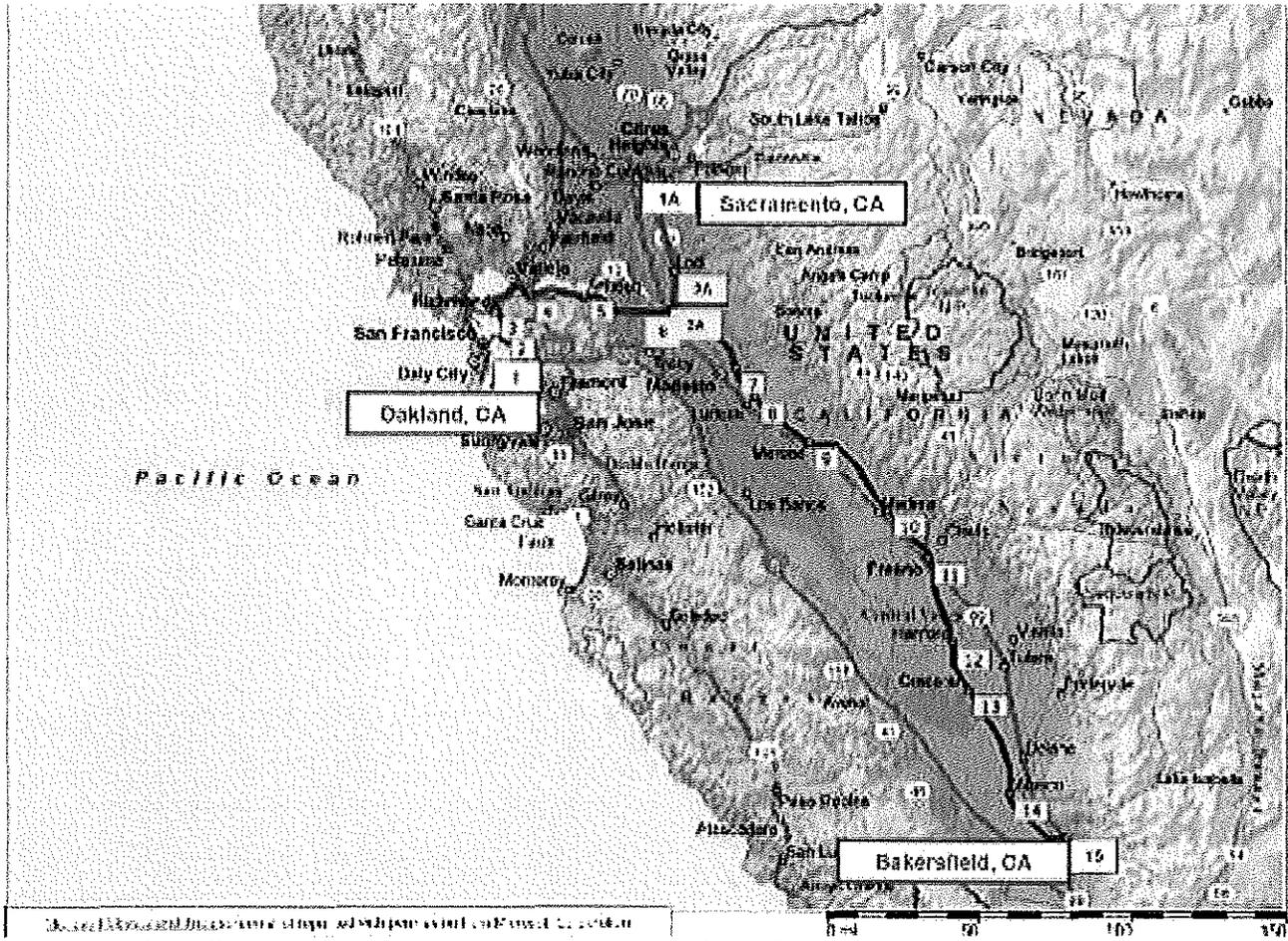
¹⁷ For example, a passenger can take an Amtrak train from Chicago to Sacramento and transfer there to a Capitol Corridor train to San Jose where, when HSR arrives, it could take an HSR train to Palmdale—or take a San Joaquin Valley train from Sacramento to Merced where, when HSR arrives, it could take a HSR train to Anaheim.

1. Harm to Existing, Fifth Most Used Route in the Nation. Amtrak San Joaquin (see maps below - 5th busiest route in the nation) serves the Hanford and Corcoran stations in Kings County. Many residents rely on this service to get to work, visit family, attend medical appointments, obtain groceries and to conduct their every day lives. The Authority's initial operating segment will bypass these stations and a third nearby station in Wasco. The Authority's replacement plan contains no funding for replacement stations in these three locations. This will strongly impact consumers and local economies. A reliable plan should be in place to address these legitimate public concerns and to substantiate the need to replace this well working status quo. The Authority's "short term" plan could span generations because the Authority cannot afford electrification now and has failed to show sufficient, realizable, reliable funding to construct and electrify the entire initial operating segment in order for it to qualify as "high speed". This hardly supports public convenience or necessity and weighs heavily on the hearts of those whose land it will take and ways of life it will destroy, only to possibly never be completed.

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<http://www.railpassengerusa.com/routes/sanjoaquin.php>



<http://4.bp.blogspot.com/-YAWeLAhHapo/Th9xECUumyI/AAAAAAAAAA/ouzx2mVDLY/s1600/Map+-+Pacific+Surfliner.PNG>

2. Interference with Existing Rail Lines; Poor Planning/Lack of Agreement: The most recent amendment to the Grant Agreement between the Authority and the FRA (dated 12/21/2012), states on page 8 that “The Grantee [Authority] represents that it has entered into and will abide by, or will enter into and abide by, a written agreement, in form and content satisfactory to FRA, with any railroad owning property on which the Project is to be undertaken, ... The Grantee may not obligate or expend any funds (federal, state, or private) for final design and/or construction of the Project, or any component of the Project, without receiving FRA's prior written approval of the executed railroad agreement satisfying the requirements of this section.”¹⁸

The Authority’s project will encroach upon the BNSF lines, and will cross it at various locations. Further, there will need to be coordination and agreement with the BNSF regarding future passenger train traffic. The project will also encroach upon and cross the UPRR’s rail lines at various locations, and will cross two rail lines belonging to the San Joaquin Railroad Company.

The Authority’s 2009 Revised Final Program EIR/EIS for the Bay Area to Central Valley section, noted the UPRR’s unwillingness to allow the use of its rights-of-way for the Authority’s HST project. In a letter dated October 12, 2011, the Union Pacific Railroad (UPRR) submitted comments to the Authority’s Draft EIR/EIS for its Merced to Fresno section. The letter complained that the abutment of the HST alignment against the UPRR’s right-of-way for a number of miles in Fresno “permanently forecloses any expansion by Union Pacific on that side of its right of way. This would include both capacity expansion and new spurs to industrial and agricultural shippers.” It also complained that in some locations the HST alignment would only be 125 feet from the UPRR’s rail line, and that this “buffer zone would not be usable for capacity or customer service.” Finally, the letter complains that “Work on the high-speed rail line not only

¹⁸ FRA Grant/Cooperative Agreement for ARRA Funding (Amendment 12/21/12), p. 8, <http://www.cahighspeedrail.ca.gov/funding.aspx>.

could physically affect Union Pacific's property, but also could affect the ability to conduct freight operations."

Many of the problems complained of by UPRR would also exist for BNSF because the Authority's HST alignment abuts against the west side of BNSF's right-of-way for a distance of four miles just east of Madera. But BNSF is concerned about more than just the new line's impact on its freight operations. Since Amtrak passenger service operates on the BNSF line, and upon completion of the ICS, Amtrak trains will still have to return to and share BNSF tracks north of Madera and at the south end near Bakersfield. Hence, coordination with BNSF regarding passenger train service is a must.

Perhaps in an effort to begin this coordination effort, The Authority declared in its October 1, 2009 Application for FRA/HSIPR funds for its Merced to Fresno HST project that "an initial MOU with Burlington Northern for the LOSSAN corridor and Central Valley to exchange information has been signed. The Authority is currently working with Burlington Northern to establish a more detailed MOU dealing with the operation within their boundaries and the rules and regulations that are needed."¹⁹

We attach a very recent letter from the BNSF to the Authority, dated April 16, 2013. At the beginning of the letter, BNSF says: "We have generally reviewed and looked over these plans, but we are at a point in our understanding of intercity passenger rail planning in the San Joaquin Valley that we are at present unable to proceed to more specific planning or review of these materials. This is in light of frankly a great deal of ambiguity and contradictions in the different materials that have been forwarded, in the public statements being made and in the absence of any kind of understanding or agreement with the public agency sponsors of these programs. It is unclear what plans are ready to be progressed on behalf of the Authority and under what terms we should consider them." The letter goes on to say that high speed passenger rail service "options under consideration appear to be inconsistent with materials or plans that the

¹⁹ Federal Stimulus Update: Merced to Fresno HST Design/Build Application (10/1/09), p. 25, http://www.cahighspeedrail.ca.gov/fed_stimulus.aspx.

Authority has submitted in descriptions to the Surface Transportation Board for exemption. ... [T]here appears too much ambiguity at this time for a review of these plans.” Finally, “BNSF has not agreed to or acquiesced in any proposed or potential alignment or change in service in the San Joaquin Valley involving our railroad, whether on, near, or adjacent to, our current right-of-way, or which could affect current or future rail service on our line, or could affect access to our line by present or future freight customers.”

Three and a half years after the Authority claimed it would enter into a “more detailed MOU” with the BNSF, the Authority seems to have been unable to conclude the “railroad agreement” with the BNSF that is required under the FRA Grant Agreement. Indeed, we see little evidence of a fruitful or harmonious relationship existing between the two parties at this time.

We have looked at the Authority’s website, in a section entitled “Caltrans and Railroad Agreements.” The only agreement posted is an agreement between the Authority and Caltrans regarding its highways. No agreement between the Authority and any of the three railroads is posted. Hence, it would appear that the Grant Agreement requirement concerning written agreements with the involved railroads has not been fulfilled, and the effect that the Authority’s new line may have on UPRR’s and BNSF’s interstate freight commerce could be very problematic and should be evaluated by the Board.

3. Haphazard, Inconsistent, and Driven by Short Term Funding: It seems this Project is more about corner cutting and rule bending than a quality, safe project consistent with the mandates of Prop. 1A (discussed below). Below are just a few examples that support this proposition:

a. The Authority is chopping the initial operating segment up into small bits and pieces and building an initial construction segment of only 29 miles, not knowing whether it will even have enough money to build out the Merced to Palmdale initial operating segment.

b. The Authority is planning on blending what they call the “bookends” of the entire system with existing transportation systems. They have not adequately explained how this will be operationally feasible, how it complies with the speeds and other conditions in Prop. 1A, how they will be able to reach agreement with the many agencies involved in those current operations, and on and on. So many questions remain unanswered. The only thing that appears clear is that we will get whatever amount of track the Authority can afford. It will not be electrified, and it will close down three very important Amtrak stations in Kings County eventually.

c. The Authority, without public notice, re-wrote its rules on bidding for construction of the first 29-mile segment of the train system. This means the lowest technically rated bidder got the contract because it was the cheapest bidder. This raises not only due process and procedural issues, but safety issues.

d. The Authority has not communicated or coordinated with Kings County regarding the impacts and destruction that will occur to prime farmland as required by NEPA. Similar concerns have been raised by farmers and constituents in the 29-mile segment at issue. These complaints and deficiencies are catalogued extensively in correspondence between the County and the Authority, the County and the Governor, the County and the FRA and others. County would be happy to share any and all of this information with STB during its investigation.

e. The Authority has not adequately explained to County why it is less environmentally harmful to stray from existing transportation corridors (ignoring Prop. 1A requirement to stay near transportation corridors to the extent feasible) and cut through Kings County rather than utilize the Highway 99/198/Visalia Airport option. Building one piece of the body, not knowing where and how the other parts will connect seems short-sited and inefficient. This appears to be a patchwork driven by factors that should have no bearing in the decision making process and ultimately affects the public and other transportation systems negatively.

f. The Authority first studied the environmental impacts of the Merced to Bakersfield segment of the system. After County and the public had invested thousands of dollars and man hours and experts reviewing and commenting on the more than 17,000 pages of environmental documents, the Authority announced that it was bifurcating the Fresno to Bakersfield portion of the Merced to Bakersfield segment and many months later issued a revised and supplemental Fresno to Bakersfield environmental document, which caused a whole new investment of dollars and man hours and experts only to find out the Authority had not even addressed many of the County's and its constituents' original comments. Many of these comments speak directly to health, welfare and safety and until they are properly, lawfully addressed, this project or any piece of the system does not rise to the level of public convenience or necessity.

g. The Authority's staff recently recommended what the Authority calls the "western alignment" through Kings County at its April, 2013 meeting. A couple days later, the new Central Valley Regional Director for the Authority asked to meet with Kings County Chairman, Doug Verboon. At that meeting, two engineers rolled out maps that were eight months old and did not even contain the most recent alignment details that the Authority's staff recommended for approval just a few days prior.

h. The Authority plays favorites with those who are not opposed, and reimburses them to cooperate, but absolutely refuses to address the harms and legitimate concerns that are obvious and consistently raised in case they are not obvious.

i. The County was recently informed that the High Speed Train Bond Committee required by Prop. 1A provided no documents to nor received any documents from the Authority prior to voting to recommend approval of bond funding. This essentially appears to be a rubber stamp with no substantiation. The requests and unbelievable dialogue regarding this request for records is included in full below as an example of the manner in which the Authority is managing this project:

From: Rita Wespi [<mailto:rwespi@mathmatinee.com>]

Sent: Thursday, May 02, 2013 8:58 AM

To: 'HSR records@HSR'

Cc: 'CARRD'

Subject: RE: Request for Bond Resolutions

Annie,

By “communication” we mean we are requesting any “writing” as defined in Government Code Section 6252g, i.e.: “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored” that went to or from the HSPT Finance Committee during the 2009-11 time period.

This definition can also be found on the Authority’s website at http://www.cahighspeedrail.ca.gov/prs_faqs.aspx#1.

If you have any additional questions, please don’t hesitate to ask. According to HSRA attorney Rachel Taylor’s April 17 letter, this request is to be fulfilled by May 2 – today.

Rita

Rita Wespi

Co-founder, CARRD - Californians Advocating Responsible Rail Design

Phone: 650-269-1781

Email: ritawespi@calhsr.com

Web: www.calhsr.com

From: Parker, Annie@HSR [<mailto:Annie.Parker@hsr.ca.gov>] **On Behalf Of** HSR records@HSR

Sent: Wednesday, May 01, 2013 11:56 AM

To: Rita Wespi; HSR records@HSR

Cc: 'CARRD'

Subject: RE: Request for Bond Resolutions

Rita – Thanks for the response. In your second line below

If this request is confusing, then we *reword* it to ask for all **communications** between the HSRA and the HSPT Finance Committee.

Can you please clarify what you mean by the word “communications” highlighted in bold above? This assist us in meeting your request.

Thanks again

Annie Parker

Information Officer
www.cahighspeedrail.ca.gov
aparker@hsr.ca.gov
916.403.6931 (w)



From: Rita Wespi [<mailto:rwespi@mathmatinee.com>]
Sent: Wednesday, May 01, 2013 10:44 AM
To: HSR records@HSR
Cc: 'CARRD'
Subject: RE: Request for Bond Resolutions

Annie,

I'm unable to specify which documents, but I would assume that someone in the Authority's senior level staff would know what communications occurred between them and the HSPT Finance Committee.

If this request is confusing, then we *reword* it to ask for all communications between the HSRA and the HSPT Finance Committee. This is not a new request: it is a rewording to assist you in identifying the responsive documents.

This request was made on March 22; no explanation describing the unusual circumstances for the delay has been provided.

Although we did point out in our April 18 email that,

The Public Records Act requires the Authority to "Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated."

it merits repeating. Government Code Section 6253.1 states:

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

"(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

"(2) Describe the information technology and physical location in which the records exist.

"(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

"(b) The requirements of paragraph (1) of subdivision (a) shall be deemed

to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.”

We look forward to receiving the responsive documents without further delay. If you have any questions, please don't hesitate to ask.

Rita Wespi, CARRD

From: Parker, Annie@HSR [mailto:Annie.Parker@hsr.ca.gov] **On Behalf Of** HSR records@HSR
Sent: Wednesday, May 01, 2013 9:12 AM
To: Rita Wespi; HSR records@HSR
Cc: CARRD
Subject: RE: Request for Bond Resolutions

Rita – Regarding this request

“In the absence of bond resolutions, is there some other way that the HSRA communicates with the HSPT Finance Committee to request bond issuance authorization? That would be responsive to this request.”

Can you please specify which documents you are requesting from the Authority?

Annie Parker

Information Officer

www.cahighspeedrail.ca.gov

aparker@hsr.ca.gov

916.403.6931 (w)



From: Rita Wespi [mailto:rwespi@mathmatinee.com]
Sent: Thursday, April 18, 2013 10:29 AM
To: HSR records@HSR
Cc: CARRD
Subject: RE: Request for Bond Resolutions

Dear Ms. Parker,

Thank you for sending Mr. Fellenz' communication regarding CARRD's Public Records Act request, although I disagree with his determination that this is a new request.

CARRD's original PRA request, on March 22, was for **requests made by the HSRA to the HSPT Finance Committee for bond issuance authorizations**. Because I assumed those requests would be done formally via Bond Act Resolutions, I referred to them in our request. The

Public Records Act requires the Authority to “Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.”

Instead, nearly a month has elapsed, with the result being that my clarification has been determined – at the last possible moment – to be a new request to be fulfilled in May. This resembles unwarranted delay more than it resembles assistance.

On March 22, 2013, CARRD submitted the following request.

“Please send the Board’s Resolutions for Bond Act Resolutions I through VIII. These are **bond issuance authorization requests made by the HSR Board to the High-Speed Passenger Train Finance Committee**. The dates are approximately January 2009, April 2009, January 2010, and September 2011.”

To which we received the following response.

April 8: “Authority records staff reviewed “...the Board’s resolutions for Bond Act Resolutions I through VIII.” As a result of this inquiry, the Authority has determined that no such records exist.”

To which we clarified the request.

April 8: “In the absence of bond resolutions, is there some other way that the HSRA communicates with the HSPT Finance Committee to request bond issuance authorization? That would be responsive to this request.”

To which Mr. Fellenz responded.

April 17: “The Authority has determined that this request is a new public records act request. Accordingly, the Authority is reviewing your request, and if such records do exist, the Authority will send this information to you by May 02, 2013.”

If Mr. Fellenz continues to be of the opinion that our April 8 clarification should be determined as a separate request with a new *twenty-four* day clock, then according to the Public Records Act he must state the “unusual circumstances” for that delay. The “unusual circumstances” must fall within one of the definitions in Gov. Code 6253(c).

We would also like to bring to Mr. Fellenz’ attention CARRD’s request of March 26, to which the Authority has not responded.

“We’d like to request materials and information the Executive Director or others within (or working on behalf of) the HSRA submitted to the HSPT Finance Committee which were intended to aid the Committee in making determinations related to the authorization of bonds which was requested on March 18 via Resolution #HSRA 13-03, Resolution Requesting Bond Issuance.

We request similar materials for Resolutions XI through XIII which are to be voted on by the HSR Board as well as the HSPT Finance Committee on March 29.

If you have any questions about this request, please don’t hesitate to ask. Although we acknowledge that under the Public Records Act you have a full 10 days to respond, we respectfully ask you to expedite this request before the Board and Finance Committee meet on Friday [March 29].”

That request is now 23 days old with no response other than an acknowledgement of receipt. To avoid confusion or conflating the two requests, I'll follow up on it in a separate email.

We reiterate our two requests and ask that the Authority comply with the California Public Records Act by releasing the requested records. Since both of these requests are past due, we ask that the records be released without further delay.

Sincerely,

Rita Wespi
Co-founder, CARRD - Californians Advocating Responsible Rail Design
Phone: 650-269-1781
Email: ritawespi@calhsr.com
Web: www.calhsr.com

From: Parker, Annie@HSR [<mailto:Annie.Parker@hsr.ca.gov>] **On Behalf Of** HSR records@HSR
Sent: Wednesday, April 17, 2013 4:49 PM
To: Rita Wespi; HSR records@HSR
Cc: CARRD
Subject: RE: Request for Bond Resolutions

Good afternoon – Please see the attached letter regarding your request below. Thank you.

Annie Parker
Information Officer
Public Records Act staff
www.cahighspeedrail.ca.gov
aparker@hsr.ca.gov
916.403.6931 (w)



From: Rita Wespi [<mailto:rwespi@mathmatinee.com>]
Sent: Monday, April 08, 2013 7:35 PM
To: HSR records@HSR
Cc: CARRD
Subject: RE: Request for Bond Resolutions

Angie,

In the absence of bond resolutions, is there some other way that the HSRA communicates with the HSPT Finance Committee to request bond issuance authorization? That would be responsive to this request.

Thanks – again!

Rita

From: Reed, Angela@HSR [<mailto:Angela.Reed@hsr.ca.gov>] **On Behalf Of** HSR records@HSR
Sent: Monday, April 08, 2013 5:01 PM
To: Rita Wespi; HSR records@HSR
Cc: CARRD
Subject: RE: Request for Bond Resolutions

Good afternoon Ms. Wespi,

Please see the attached letter in response to your PRA request sent below.

Thank you

Angie Reed
High-Speed Rail Authority Records Staff
records@hsr.ca.gov

From: Rita Wespi [<mailto:rwespi@mathmatinee.com>]
Sent: Friday, March 22, 2013 2:10 PM
To: HSR records@HSR
Cc: CARRD
Subject: Request for Bond Resolutions

Hi Angie,

Please send the Board's Resolutions for Bond Act Resolutions I through VIII. These are bond issuance authorization requests made by the HSR Board to the High-Speed Passenger Train Finance Committee. The dates are approximately January 2009, April 2009, January 2010, and September 2011.

Thanks,
Rita

Rita Wespi
Co-founder, CARRD - Californians Advocating Responsible Rail Design
Phone: 650-269-1781
Email: ritawespi@calhsr.com
Web: www.calhsr.com

INCREDIBLY, THE AUTHORITY DOES NOT APPEAR TO COMMUNICATE WITH THE HIGH SPEED TRAIN FINANCE COMMITTEE – NOTE THE ULTIMATE RESPONSE:

“May 2, 2013

Ms. Rita Wespi
rvespi@mathmatinee.com

SENT VIA EMAIL ONLY

Dear Ms. Wespi

On April 08, 2013, the California High-Speed Rail (Authority) received a follow-up email from you regarding a request from additional information from a PRA response we had sent you on April 08, 2013.

“In the absence of bond resolutions, is there some other way that the HSRA communicates with the HSPT Finance Committee to request bond issuance authorization?”

The Authority requested further clarification of this request, and was provided the following information on May 2, 2013.

“If this request is confusing, then we *reword* it to ask for all communications between the HSRA and the HSPT Finance Committee. By “communication” we mean we are requesting any “writing” as defined in Government Code Section 6252g, i.e.: “any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored” that went to or from the HSPT Finance Committee during the 2009-11 time period.

Authority records staff has reviewed your clarification of your original request above, has conducted a document search, and has determined that no such records exist.

If you have any questions regarding this document, please direct them to our records staff at records@hsr.ca.gov.

Sincerely,
tsf
Thomas C. Fellenz
Chief Counsel
California High-Speed Rail Authority”

j. These instances are a snap shot, but the list of concerns is extensive. The County urges the STB to thoroughly investigate not only this micro portion of the larger project, but the entire system as described in the most recent Business Plan of the Authority.

4. Violations of Proposition 1A (including funding and environmental requirements)²⁰: In 2008, the California legislature passed AB 3034. That bill placed on the ballot a bond measure entitled Proposition 1A to provide nine billion dollars in state funding towards the construction of a high-speed rail system in the state. The system was to extend from San Diego and Los Angeles on the south to San Francisco and Sacramento on the north. In November 2008, Proposition 1A was narrowly approved by California voters.

In the course of the election campaign, proponents of the measure, including the members of the Board of Directors of Defendant and Defendant California High-Speed Rail Authority (hereinafter, "Authority") told the voters that fares for the trip from Los Angeles to San Francisco would be, "about \$50 a person;" and that there would be, "Matching private and federal funding to be identified BEFORE state bond funds are spent." These assertions have turned out not to be true.

More importantly, the bond measure itself made specific promises to California's voters to convince them to support the measure. The measure promised:

- That bond funds would provide no more than half of the costs to construct any corridor or usable segment²¹ within the system, with the remainder to come from private and other public sources;

²⁰ The County of Kings and two taxpayers who live within the County filed a lawsuit against the Authority, et al. to stop waste spending and enjoin further violations of Prop. 1A.

²¹ Streets and Highways Code §2704.01(g) defines a "usable segment" as a portion of a corridor that includes at least two stations. §2704.01(f) defines a corridor as a portion of the overall highspeed rail system connecting the San Francisco Transbay terminal to Los Angeles Union Station and Anaheim and linking the state's major population centers.

- The Authority would prepare and submit to the legislature and the Department of Finance a detailed funding plan for each corridor or usable segment proposed for construction at least 90 days before funds would be appropriated for construction of that corridor or segment;
- An updated funding plan would be prepared, submitted to, and approved by the Director of Finance before any bond funds could actually be expended towards construction of a corridor or usable segment;
- Prior to submitting a request for bond funds, and prior to those bond funds actually being spent, the Authority would have to certify that it could complete construction of the proposed corridor or usable segment in accordance with the funding plan.
- Each corridor or usable segment for which bond funds were appropriated and used would be suitable and ready for high-speed train operation when that corridor or segment was completed;
- One or more passenger service providers could begin using the tracks or stations in that corridor or segment for passenger train service;
- Passengers would not be required to change trains when traveling within any one corridor;
- Passenger service by Authority in the corridor or usable segment would not require a local, state, or federal operating subsidy;
- All project-level environmental clearances necessary to proceed with construction of the corridor or usable segment would be completed prior to the submission of a funding plan.

Unfortunately, when Authority prepared and approved its funding plan for an Initial Operating Section (“IOS”) in November 2011, as well as when it later requested an appropriation

of bond funds, it was clear that the plan failed to satisfy many of the requirements of AB 3034, and even more importantly, the promises made to the voters in Proposition 1A.

Consequently, Authority's actions in approving that funding plan, submitting it to the legislature and to the Department of Finance, and requesting bond funds violated its duty to the voters of California under Proposition 1A and the California Constitution. In addition, the actions of the other defendants in allowing appropriation of Proposition 1A bond funds for the construction proposed in the Funding Plan also violated the terms of the Proposition, and those actions were therefore also improper.

5. Environmental Review is Inadequate and Violates Prop. 1A: The Authority's certification of environmental clearance for IOS-South was invalid under Proposition 1A. The Funding Plan included a certification purporting to satisfy the requirement for environmental clearance under Proposition 1A. That requirement is provided below:

(K) The authority has completed all necessary project level environmental clearances necessary to proceed to construction. [*sic*] (AR 11.)

However, in its Funding Plan, the Authority instead made the following certification:

In connection with the Initial Construction Section, the Authority *will have*, prior to expending Bond Act proceeds requested in connection with this Funding Plan, completed all necessary project level environmental clearances necessary to proceed to construction. (AR 72 [emphasis added].)

This certification did not conform to the requirements of Proposition 1A. and violated those requirements in two important ways: 1) The Authority's certification pertained only to the ICS, while Proposition 1A required that the Funding Plan and associated certifications pertain to the entire corridor or usable segment thereof for which bond funding was to be requested; 2) The Authority's "certification" was made in the future tense, while Proposition 1A required that the environmental clearance already be completed at the time the certification was made.

Requiring prior completion of environmental clearance for the entire corridor or usable segment proposed for construction makes good sense in terms of Proposition 1A's intended protections for taxpayer funds. If clearances had not yet been obtained, or had not been obtained for the full corridor or usable segment, there could be extended delays before or during construction while environmental clearance was completed for the full corridor or usable segment being funded. By requiring all environmental clearances to have been completed before bond funds were requested, the voters intended that once bond funds had been committed, construction of the full corridor or usable segment would proceed expeditiously and without undue delay. This was especially important given the legislature's intent, as stated in Section 8(f) of AB 3034 that the entire high-speed rail system be completed no later than 2020.

Because the ICS is not a usable segment, the Authority's Funding Plan could not certify that all project-level environmental clearances had been obtained for the corridor or usable segment thereof, as required under Proposition 1A.²² Instead, the Authority's certification only addressed proceeding to construction of the ICS. In doing so, the Authority failed to comply with the requirements of Proposition 1A, making both the certification and the Funding Plan improper and invalid.

A second problem with the Authority's certification of environmental clearance is that §2704.08(c)(2)(K) requires that the Authority certify that all necessary project level environmental clearances had been completed at the point when the funding plan was approved and submitted. Instead, the Authority's certification states that all project level environmental clearance for the ICS will have been completed prior to expending the requested bond act

²² Subsection (c)(2)(K), requiring the certification, does not explicitly mention the corridor or usable segment thereof. However, given that the certification is to be made in connection with a "detailed funding plan for that corridor or usable segment thereof" (§2704.08 (c)(1) [emphasis added]), the requirement is understood, as well as being the only reasonable interpretation.

proceeds. (AR 72.) Indeed, the certification goes on to state that even for the ICS, as of November 2011, when the Funding Plan was approved and submitted:

The draft environmental impact reports/environmental impact statements for the Merced to Fresno and Fresno to Bakersfield segments were released for public comment on August 9, 2011. Public comment closed on October 13, 2011. The revised draft environmental impact reports/environmental impact statements for the Fresno to Bakersfield segment will be reissued in spring of 2012 for further public comment. (*Id.*)

Thus, the Funding Plan itself acknowledged that even in regard to the ICS, project-level environmental clearance had not been obtained as of the date the Funding Plan was approved and submitted. Yet Proposition 1A's language is clear and unambiguous: "The authority has completed all necessary project level environmental clearances necessary to proceed to construction." If the Authority was not yet able to make that specific certification, which it clearly was not in November 2011, and was still not in July 2012 when the appropriation was approved²³, it was clearly premature and improper for the Authority to attempt to approve and submit a Funding Plan and represent that it had satisfied the requirements of Proposition 1A.

The Authority may argue that it was justified in making an alternative certification, that by the time it began to expend bond measure funds, it would have completed all project-level environmental clearances needed to commence construction. However, not only is that not what the clear language of the measure required, it also required the Authority to see into the future – something that is commonly accepted to be impossible. While the Authority could expect to have completed environmental clearances at some future time, and could perhaps even promise to

²³ And, as will be shown in the brief section being submitted for the Code of Civil Procedure §526a causes of action, the Authority is still unable to certify as of the current date.

complete environmental clearances²⁴, the Authority could not possibly certify that environmental clearances would be completed by an as-yet unknown future date.

Further, such a certification would run counter to the voters' intent in approving this requirement. As already explained, the certification of environmental clearance was part of a package of taxpayer protections that the legislature incorporated into Proposition 1A to reassure the voters that the bond funds would be spent prudently and not wasted. By requiring that the

Funding Plan not be submitted until the Authority could certify it had already completed all necessary project level environmental clearances, the legislature, and more importantly the voters, could be assured that bond funds would not be requested or appropriated prematurely, and perhaps wasted in constructing part of a segment when environmental clearance of the full segment turned out to be impossible.²⁵ This, however, is precisely the situation the Authority could face due to its defective certification. The Court must therefore reject the certification, and the Funding Plan, as not meeting the requirements of Proposition 1A.

²⁴ Although the case law would indicate that the Board could not bind a future Board in this manner. (*See, City and County of San Francisco v. Cooper* (1975) 13 Cal.3d 898, 929 [no legislative board, by normal legislative enactment, may divest itself or future boards of the power to enact legislation within its competence].)

²⁵ For example, it might turn out that part of the segment crossed habitat for an endangered species, invoking the federal Endangered Species Act and prohibiting the granting of required federal permits. (*See, e.g., Tennessee Valley Authority v. Hill* (1978) 437 U.S. 153 [construction of nearly-completed dam halted because it would jeopardize protected snail darter fish].) This should not be considered merely a theoretical threat. The environmental review process has already identified significant environmental challenges requiring significant alignment changes. (*See, e.g., Town of Atherton et al. v. California High-Speed Rail Authority*, Sacramento County Superior Court Case #34-2008-8000022 (2009) [Authority required to revise EIR to address inability to use Union Pacific Railroad right of way]; AR 286 [alignment modifications required to avoid adverse impacts on protected species and habitat].)

IV.

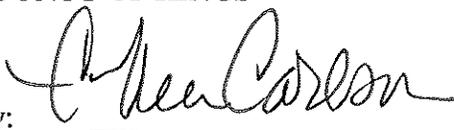
CONCLUSION

The County has been inundated with this Project. The County therefore apologizes in advance for a less than well written presentation to your Board. It is the County's hope that this information will show your Board that this project needs attention and investigation. It is not being implemented in a manner that satisfies the voters. It's management raises concerns regarding health, safety and welfare, let along public necessity and convenience. We sincerely urge your Board to deny the exemption, revisit the environmental documents and require the Authority to provide details necessary for you to make an informed decision. The County has been unable to accomplish this. It's legitimate concerns have not been addressed nor resolved.

By my signature hereto, I certify that: I have read the foregoing opposition document, I am authorized to file it, I believe there is good ground for the opposition, and the opposition has not been interposed for delay.

COUNTY OF KINGS

Dated: May 8, 2013

By: 

Colleen Carlson,
County Counsel