Regarding: California High Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section. (STB Finance Docket No. 35724 (Sub-No. 1))

Subject: Opposition and Protest Reply to the California High Speed Rail Authority's Petition for Exemption

Filed By: William H. Warren, Filing ID Number of 235332, March 7, 2014

Letter to Surface Transportation Board

March 7, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423-0001

Re: California High Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section. (STB Finance Docket No. 35724 (Sub-No. 1))

Subject: This is an Opposition and Protest Reply to the California High Speed Rail Authority's Petition for Exemption

Dear Ms. Brown:

Regarding this submission for Docket Number FD35724 (Sub-Number 1):
a) I have previously filed, by January 21, 2014, as a party of record with the Surface Transportation Board with a notice of intent to participate in this proceeding.
b) I intend to exercise my right as an individual private citizen to have the service requirements under 49 C.F.R. § 1104.12(a) waived.
c) My Filing ID Number is 235332.
d) This filing and its attachments contain color.

I would like to provide the following information for the Surface Transportation Board as it considers the California High Speed Rail Authority's (CHSRA's) Petition for Exemption of the Fresno to Bakersfield HST Section.

I believe I am qualified to speak on these issues as I have been involved in the research and production of over 40 different reports concerning the CHSRA' proposed plan. My professional experience is summarized on the second page of Attachment 2.

Overview

There is a fundamental issue at the core of the High Speed Rail program here in California. The issue is that there is no committed funding program or funding sources, public or private, to build this $80 to $120 Billion project. What you have in front of you is a Petition to build about 110 miles of track as part of what proponents define as an 800 mile project connecting Los Angeles, San Diego, San Francisco and Sacramento.

So my position is clear, I am very opposed to this program as I believe it is unwise to start to construct something of this magnitude without a committed source of construction funds, and I also believe what ever funds that might be spent building a HST/HSR system would be of a much greater value in California as funds to help relieve the commuter congestion that is strangling the Los Angeles Basin and the San Francisco Bay Area. The counter argument is that “The people voted for HSR”. No, what the people voted for in 2008 is not what this program has become, and that is the issue now before the courts.

What Is Going To Be Built?

In February 2014 the CHSRA published a Draft of its 2014 Business Plan. I have enclosed, as Appendix A, five pages from this report. These pages are numbered:

Page 14 – A map of California which shows the planned HSR network. The section you are considering today is the track between Fresno and Bakersfield.

Page 33 – Exhibit 3.1 shows the CHSRA’s time line for the construction and operation of the phases to get service from San Francisco to Los Angeles. On the top line the 300 mile “Initial Operating Section” is shown to become operational in 2022. Prior to that, the “First Construction Section” is shown to be completed in 2017. This first 130 mile part of the IOS, between about at Madera (north of Fresno) and Bakersfield, used to be called the ICS (Initial Construction Section). You approved construction between Merced and Fresno last year, and today you are considering the Fresno to Bakersfield section.

Page 36 – Exhibit 3.5 shows, on the far right, the projected capital cost in Year of Expenditure $s for the various parts of the project. The 300 mile IOS, from Merced to San Fernando, is projected to cost about $31 Billion. The FCS/ICS portion of the IOS is projected to cost $6 Billion (from north of Fresno to Bakersfield). The Bay to Basin step will extend the tracks north to San Jose and will cost an additional $20 Billion.

The IOS Project

Page 53 – Exhibit 6.5 shows the details of the $31 Billion needed for the 300 mile IOS. Riders going north will use HSR Buses to get from Merced to San Francisco, San Jose and Sacramento. Riders going south will use HSR Buses to get from San Fernando to Los Angeles. The Appropriated Funds of $6 Billion are to build the FCS/ICS, including the Fresno to Bakersfield section of track. Note the $3.3 Billion of Federal Grants, this is the total amount of Federal Grants that California has been awarded. I would expect as long as the Republicans control the House of Representatives there will be no more Federal grants. To meet the committed “matching “of these Federal grants, the State of California has appropriated $2.7 Billion of Proposition 1A funds. These funds are currently unavailable due to a legal judgment in the State Superior Court. This judgment is now in the appeal process. Below the Appropriated Funds are $4.2 Billion of additional State Bond funds. These funds are also, by definition, unavailable due to the legal issues mentioned above. However, even if these legal challenges are resolved in favor of the CHSRA, these State Bond funds can not be spent without an equal amount of other “matching” funds, which could be other State funds, Federal grants, local funds, etc.   Finally, note that the balance of $21 Billion needed to build the IOS is identified as “Uncommitted”. It might be better to classify them as “Unknown sources”, because in the past five and a half years, since the passage of Prop 1A in California, none of these funds have been committed by anyone.

The Bay to Basin Project

Page 55 – Exhibit 6.6 shows the details of the $20 Billion needed to complete the Bay to Basin level system, with rail service from San Jose to San Fernando. Some, but not all of the HSR trains will continue on to San Francisco using the Caltrain tracks. Riders going from San Fernando to Los Angeles will need to continue to use HSR Buses. Of the $20 Billion estimated to complete this segment, $11 Billion are also identified as "Uncommitted", but as above, should more properly be classified as from "Unknown sources". Note there is about $9 Billion identified as coming, for the first time, (sometime after 2022 but before 2026) from "Private Sector Financing". The plan is that these non-public funds will finally become available because the profitability of the IOS will convince the private investors that investing in the HSR infrastructure will be a profitable venture.

This means the IOS's actual operating margin (revenues less operating expenses and maintenance, over revenues) must meet or exceed the projected IOS operating margins so that there will be confidence on the part of private investors that the projected operating margins during the future years of Bay to Basin and Phase One operations will occur. Basically the private investors will need to be convinced in the 2022 to 2026 time period that there will be a high enough positive cash flow to service the debt associated with this $9 Billion investment in the 2027 and onward time period. My professional opinion is that there is no known international HSR or domestic rail system (such as Acela) that has such a positive operating margin. The annual payment for 30 years to recover principal and interest is in the range of $520 Million at 4% interest, $585 Million at 5% interest, and $655 Million at 6% interest. The medium case of the CHSRA Financial Plan[1] shows that these payments can not be serviced until about 2030, when the Phase One Blended system goes into operations. In other words the funds to be borrowed to build the Bay to Basin system can not be serviced by their Medium Case projections for the Bay to Basin operations, and such service must wait until the next larger system goes into operations.

Long Term Funding

This then raises the question of how will the financing of the last stage on construction be financed? If the larger operating margin of the Phase 1 operations is being used to repay the debt to build the Bay to Basin system, if additional private debt is needed to build the Phase 1 operations, where will this debt service come from? Finally this set of questions has to be put back in the context of the projected operating margins. It is my professional opinion that these projections are not reasonable as the projected cost per seat mile, and per passenger mile, are lower than any evidence I have seen from the international HSR market, or the Acela market in the Northeast Corridor. I am hopeful this issue will be resolved before a California court in the near future. If you are interested in gaining more insight into this question of a positive or negative operating margin, Mr. William Grindley is submitting several studies, in his Protest Statement to this Petition for Exemption, that speak directly to this question. Naturally, if these large projected operating margins do not

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[1] See page 8 and 9 of "High, Medium, Low Cash Flows, Draft 2015 Business Plan". Found at: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2014drft_High_Medium_Low_Cash_Flows.pdf

materialize, the debt service to the private investors will fall on the backs of the taxpayers of the State of California.

This speaks to the initial point I made. There has never been, and there is not today, a long term source of cash to fund the construction of this project. The only funds raised in the State have been the $9 Billion of Prop 1A Bonds, and the only funds raised outside of California has been the $3 Billion of FRA grants. Total is $12 Billion. For a project that is supposed to be carrying passengers in 8 years, and which will eventually consume $70 to $100 Billion, at the minimum.

Short Term Funding

As discussed above, the short term funding centers around the available funds to build the FCS/ICS from north of Fresno to Bakersfield. These funds are coming from two sources. First, FRA Grants (ARRA and FY10 funds) in the amount of $3.3 Billion. Second, State Prop 1A Bond funds in the amount of $2.7 Billion. Also, as discussed above, the State funds are currently unavailable due to a state lawsuit currently going through the appeal process. To allow the construction to continue, the FRA and the CHSRA have agreed to spend the FRA funds first, and hope that the State funds become available in the near future. The relationship between the FRA and the CHSRA is discussed in a paper I co-authored, titled "DOT/FRA Has Several Reasons To Withhold Further Funding From California's High-Speed Rail Project", dated November 2013. It is Attachment 1. Please review Section 2 of this report to understand the risks that the FRA is undertaking.

In December 2012 the FRA – CHSRA Grant Agreement was amended with Amendment 5. This Amendment specified, in a Funding Contribution Plan (FCP), how much the two parties would contribute in an annual basis. This FCP was revised in February 2014. Appendix B contains a 6 page analysis of the changes that the FRA and the CHSRA have agreed to. In summary, Exhibit 3 on page 3 of this report shows that on a cumulative basis the State contribution will drop by about a half a Billion dollars in the next fiscal year and will reach a peak reduction of about a Billion dollars in FY17. Naturally, these funding reductions will be compensated by an increase of unmatched FRA funds by the same amount, as shown on Exhibit 2.

To offset some of this unavailability of State Prop 1A funds the Governor's office is asking, through the Legislative process, for a granting of Cap and Trade funds to the CHSRA. There is tremendous amount of uncertainty regarding this request, in terms of the amount of funds that could be made available, and the legality of actually using Cap and Trade funds to construct a railroad. The Legislative Analysts Office has published a report on this topic and it provides a wide range of possible cumulative Cap and Trade "revenues" over the next 6 to 7 years[2]. The Governor has asked that 1/3 of all Cap and Trade funds be allocated to CHSRA. If that was to occur and it withstands court challenges, it is conceivable that about $2 Billion of Cap and Trade funds could be used to replace most of the $2.7 Billion of the Prop 1A funds that had been appropriated to

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[2] See page 4 of "LAO, The 2014-15 Budget: Cap-and Trade Auction Revenue Expenditure Plan". Found at: http://www.lao.ca.gov/reports/2014/budget/cap-and-trade/auction-revenue-expenditure-022414.pdf

construct the FCS/ICS. Needless to say the short term funding by the State is very much in flux, while the FRA is committed to contributing $614 Million in FY15, ending in June 2015, and $881 Million in FY16. This is shown on Exhibit 5 of Appendix B.

While all this State funding of the ICS is very much up in the air, there is another issue coming on the table that raises additional long tem funding questions. As mentioned above the FCS/ICS is supposed to be from north of Fresno (in the section the STB approved in 2013) to Bakersfield (in the section currently under consideration). A total of $6 Billion is budgeted for this project, as discussed on page 53 of the Draft 2014 Business Plan, $3.3 from the FRA and $2.7 from State Prop 1A funds. It is my professional opinion that this $6 Billion is inadequate to build track as far south as Bakersfield. The current plan is to build "Amtrak Ready" track from north of Fresno to Bakersfield, or as close to Bakersfield as can be accomplished with the $6 Billion. There is no intention to make this right of way "HSR Ready" at this point in time. Adding electrification, PTC for HSR, etc, will occur when the entire IOS is built to the north and south of the FCS/ICS. Until the IOS is built, the FRA will have an "independent utility" protection of their investment in that the current Amtrak San Joaquin rail service can be moved from the current line it shares with BNSF freight to the new FCS/ICS track. To achieve this "independent utility" the northern and southern end points of the FCS/ICS will be connected to the existing BNSF track which Amtrak currently uses. My analysis shows that to actually extend the FCS/ICS, in Amtrak Ready condition, to Bakersfield will require funds in the range of about $7.8B. Since it is clear there will be no more funds contributed to the FCS/ICS, they will probably only be able to spend the $6 Billion they have, in theory. This is about 77% of the $7.8 Billion they need to get to Bakersfield. If that is correct, then they will most probably not be able to build the last 23% of the 130 miles, which is about 30 miles. Therefore it is my opinion that they will terminate the FCS/ICS about 30 miles north of Bakersfield. This issue of a short fall in the ICS funding was discussed in a report I co-authored with Mr. Grindley, and which I have attached to this letter as Attachment 2. It is titled; "Diminishing Prospects For The CHSRA's Initial Construction Section", dated July, 2013. Please see pages 14 to 17 of our report and Appendices B and C. There is a one page, Addendum dated February 2014, at the back of Attachment 2, where we discussed the increase in cost to the $7.8 Billion range.

The Transition From Short Term To Long Term Funding

As stated above in **The IOS Project**, page 53 of the Business Plan discuses the need for about $31 Billion to build the IOS (which includes the $6 Billion FCS/ICS, and it assumes the FCS/ICS reaches Bakersfield). The State has about $3 Billion from the FRA, leaving a State requirement of $28 Billion. If the legal issues are not resolved in the favor of the CHSRA, the State will have to secure the availability of some other State funds to fill the gap of about $28 Billion (worst case). If the CHSRA prevails, then the gap is "only" about $21 Billion. If Cap and Trade becomes the only other source to build the IOS, even if a Billion dollars was made available each year (1/3 of total annual Cap and Trade revenues of $3 Billion), it will take over 20 years to complete the IOS. Clearly this is an inadequate funding plan. It is important to also understand that the CHSRA is correctly predicting that private investment funds will not be available to build the IOS as the State must show the operating margin on the IOS, to be able to attract private investment to build the Bay to Basin system.

As I stated in my introduction the fundamental problem remains a lack of a long term funding plan with a committed source of revenue. It appears that even a third of very speculative future Cap and Trade revenues will not solve this problem. This is a long term problem in the State and it goes back to before the 2008 time period when Prop 1A was passed by the voters in the fall of 2008, 5 and ½ years ago. I have attached as Attachment 3 a well researched paper, by Mr. Mark Powell, which traces the history and evolution of the funding of HSR in California. It is titled "The History and Status of the CHSRA's Unlawful Funding Plan", dated March 2014. The analysis starting on page 25 shows that there used to be a wide range of construction projections, all of them in excess of the $67 Billion that is shown in the Draft 2014 Business Plan. Clearly the CHSRA just wants the "low end" of the cost projections and just the Phase 1 Blended system to be viewed as the limit of the needed, but mostly non existent, funding.

In Summary

I respectively request that you take into consideration the lack of any short term or long term funding to build the system, because approving the construction of the 110 mile Fresno to Bakersfield section accomplishes nothing positive, and much destructive, if the State can not show a "committed funding" path to build the entire 300 mile IOS from Merced to San Fernando.

Thank you,

William H. Warren

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With this Letter:
Appendix A - Five pages from the CHSRA Draft 2014 Business Plan
Appendix B - Analysis Of The New CHSRA Funding Contribution Plan (FCP) of December 2013

Attachment 1 - DOT/FRA Has Several Reasons To Withhold Further Funding From California's High-Speed Rail Project, dated November 2013.
Attachment 2 - Diminishing Prospects For The CHSRA's Initial Construction Section, dated July, 2013 and Addendum, dated February, 2014.
Attachment 3 - The History and Status of the CHSRA's Unlawful Funding Plan, dated March 2014.

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Appendix A

Five pages from the CHSRA Draft 2014 Business Plan

High-Speed Rail: Connecting California

Section 3: *Capital and Lifecycle Costs*

INTRODUCTION

This section presents the updated capital cost estimates for the Phase 1 high-speed rail system connecting San Francisco and Merced with Los Angeles and Anaheim through the phased and blended implementation approach adopted by the Authority in the 2012 Business Plan. This section also presents lifecycle cost estimates based on a detailed analysis of projected future high-speed rail system component rehabilitation and replacement requirements.

EXTERNAL REVIEWS OF THE CAPITAL COST ESTIMATES

Given the importance of accurate cost forecasting, a bipartisan request from members of the Congress initiated a review of the Authority's cost and ridership projections by the GAO. After an extensive review of the 2012 Business Plan cost estimates, the GAO found that the Authority's cost estimates met all applicable guidance from the FRA and the USDOT.

PRESENTATION OF CAPITAL COSTS

The capital costs for the high-speed rail system are presented in this chapter in two ways:

- **Constant Dollars**—Estimates are provided in constant 2013 dollars to serve as a baseline for conversion to year-of-expenditure (YOE) dollars.
- **Year-of-Expenditure Dollars**—The baseline cost estimates are then converted into YOE dollars by using the baseline 2013 costs and projecting them into the future, using the phased implementation approach and schedule described in the 2012 Business Plan (IOS, Bay to Basin and Phase 1) and shown in Exhibit 3.1.

Exhibit 3.1 below shows the planning schedule used by the Authority for converting constant dollars into year of expenditure dollars and for projecting key performance data, including ridership forecasts.

EXHIBIT 3.1 PHASED IMPLEMENTATION PLANNING SCHEDULE

CAPITAL COSTS IN YEAR-OF-EXPENDITURE DOLLARS

The previous section showed the capital cost estimates by phase in 2013 dollars. This section converts the 2013 estimates to their YOE estimates using the planning schedule shown in Exhibit 3.1 and assumptions regarding inflation. In this Draft 2014 Business Plan, costs are inflated by applying an inflation rate for each year beyond the 2013 baseline. Inflation for 2014 through 2016 is assumed to be 2 percent per year, and inflation for 2017 and beyond is assumed to be 3 percent per year. The actual cumulative inflation rate for the years 2010 through 2013 was 4.3 percent, for an average of just over 1 percent per year.

Exhibit 3.5 shows cost estimates in 2013 and YOE dollars for the cost estimates previously shown in Exhibits 3.2, 3.3 and 3.4. The YOE cost estimates are essentially unchanged since 2012, down by less than one percent.

EXHIBIT 3.5 YEAR-OF-EXPENDITURE COST ESTIMATES

SECTION	INCREMENTAL CAPITAL COST (BILLIONS 2013$)	CUMULATIVE CAPITAL COST (BILLIONS 2013$)	COMPLETION OF SECTION	INCREMENTAL CAPITAL COST (BILLIONS YOE$)	CUMULATIVE CAPITAL COST (BILLIONS YOE$)
IOS	27.8	27.8	2022	31.2	31.2
Bay to Basin	14.7	42.5	2026	19.5	50.7
Phase 1	12.4	54.9	2028	16.9	67.6

Subtotals for information only. Rounded.

LIFECYCLE COSTS

The Authority developed an updated estimate of system lifecycle costs for the Draft 2014 Business Plan, based on detailed analysis of system component rehabilitation and replacement requirements. The Authority developed an analysis that projected lifecycle costs over a 50-year analysis period, from 2022 through 2070. To support and be consistent with the financial analysis prepared for this 2014 Business Plan, which is discussed in Section 6, the lifecycle costs are presented here for the period from 2022 through 2060.

As with any transportation system, lifecycle costs are distinct from day-to-day operating and maintenance (O&M) costs. O&M costs are routine maintenance and inspection costs required for the day-to-day operation of the system and regular upkeep to meet regulatory requirements and to address any unanticipated issues that may come up over time. In contrast, lifecycle costs only include rehabilitation and replacement costs to replenish capital assets.

Rehabilitation Costs are major, non-routine scheduled upkeep activities required throughout an asset's useful life for the asset to reach its design life. This may include replacing some of the components that have reached the ends of their useful lives within a larger asset whose overall useful life has not been reached.

Replacement Costs are the costs to fully replace the asset or major components of the asset (as appropriate) upon the end of its design or useful life.

To prepare this more comprehensive and robust lifecycle cost forecast, a model was developed that drew upon international best practice and that factors in the second-level cost categories associated with the FRA standard cost categories used in the capital cost estimates. For each second-level cost category, appropriate rehabilitation and replacement costs based on the asset's design life and upkeep requirements were applied to calculate the lifecycle costs for those assets over a 50-year analysis period. Assets that did not require rehabilitation or replacement during that analysis period did not contribute any costs in the analysis.

tering into a multi-year operating contract with an operator with skill and experience in this area which would extend beyond the ramp-up period.

The activities of the operator are expected to include managing operating schedules to accommodate growth in demand, providing input on fares and pricing, developing ancillary revenues, managing the addition of new services as the system expands and introducing new trains into service. A key objective of the operator will be to manage operating performance, i.e., matching revenues against operating costs, in order to enhance profitability while building the service. Consistent with proven international experience, this early expertise will help the Authority build an initial operating service plan that balances profitability, growth in ridership, brand recognition and revenue for long-term success. The operator will help build the California high-speed rail brand through a strategic marketing effort including brand awareness, interface with stakeholders such as regional transportation providers, and various types of promotion.

RISK ANALYSIS - MONTE CARLO SIMULATION

A Monte Carlo analysis (or simulation) is a tool to understand the probability or potential for an event to occur, in this case the probability that the system will breakeven. The analysis works as though there are two large bags full of marbles, one with 5,000 marbles each containing potential O&M costs, with more of the marbles having values around the median cost estimate than around the extreme (high or low) values. The second bag of 5,000 marbles contains potential revenue outcomes, again with more marbles with values around the median than the high or low outliers.

- A Monte Carlo analysis simply "picks" one marble at random from the revenue bag and one marble at random from the cost bag, subtracts the number written on the cost marble from the one written on the revenue marble and records the value.
- The analysis then puts the marbles back into their respective bags and repeats the process approximately 5,000 more times which builds up a distribution of potential results and generating a degree of confidence (or confidence interval, expressed as a percentage) as to the likelihood of project breakeven.

FUNDING OF CAPITAL COSTS

This section discusses the total funding needed to build the system, funding that has been committed, capital that can be borrowed based on the net cash flow of the system, and funding that is not yet committed.

The first construction segment of the IOS will be funded with a mix of Proposition 1A funds and federal funds. A total of $6 billion has been appropriated for the first construction segment.

After completion of the first construction segment of the IOS and funding of book-end investments, $4.2 billion of Proposition 1A bond proceeds remains available to partially fund the remainder of the IOS.

Exhibit 6.5 illustrates the costs and funding needed to the complete the IOS.

The Authority has Proposition 1A bond proceeds and federal grant funds available to fund the IOS. Revenues from the state's Cap and Trade program have also been identified as a potential funding source.

EXHIBIT 6.5 SOURCES AND USES FOR COMPLETING THE IOS (YOE DOLLARS IN MILLIONS)

IOS SOURCES AND USES OF FUNDS	YOE $ IN MILLIONS
SOURCES OF FUNDS	
Appropriated Funds	
State Bonds (Proposition 1A)	$2,684
Federal Grants	$3,316
Committed Funds	
State Bonds (Proposition 1A)	$4,240
Uncommitted Funds	$20,934
TOTAL	**$31,174**
USES OF FUNDS	
Capital Expenditure	$31,174
TOTAL USES	**$31,174**

Numbers are subject to rounding

in the project, that are responsible for designing the most cost effective solutions and responsible to build, install and operate major portions of the system.

→ **Local and Project Sources**

The Authority is studying how to develop the system to take advantage of a number of non-ticket revenue opportunities. These opportunities include parking revenue, commercial development, advertising and sponsorship rights, communication right-of-way sharing and onboard revenues.

Once the IOS is in operation, cash flows will be available from the project that can be used to support capital from government, private-sector debt programs and private-sector equity investments. As discussed in the next section, \$6.2 billion to \$12.4 billion is anticipated to be available from project-supported capital sources for use in developing the Bay to Basin phase. For planning purposes, the Authority has assumed the midpoint of this range – \$8.5 billion – will be available from project-supported capital sources. The remainder of the funding for the Bay to Basin phase is expected to come from a combination of federal, local and other funds as described above.

Exhibit 6.6 illustrates the costs and funding needed to the complete the Bay to Basin phase. Phase 1 construction costs are estimated to be \$16.9 billion and the Authority anticipates funding and financing Phase 1 in a manner similar to the Bay to Basin phase.

EXHIBIT 6.6 SOURCES AND USES FOR COMPLETING THE BAY TO BASIN (YOE DOLLARS IN MILLIONS)

BAY TO BASIN SOURCES AND USES OF FUNDS	$'MM YOE
SOURCES OF FUNDS	
Net Operating Cash Flow	$165
Private Sector Financing	$8,542
Uncommitted Funds	$10,830
TOTAL	**$19,537**
USES OF FUNDS	
Capital Expenditure	$19,537
TOTAL USES	**$19,537**

Numbers are subject to rounding

EXHIBIT 6.7 DISCOUNTED CASH FLOWS FOR PLANNING CASE—IOS THROUGH BAY TO BASIN (YOE DOLLARS IN MILLIONS)

$'MMS	DISCOUNT RATE		
	8%	11%	14%
INVESTMENT PROCEEDS	$12,400	$8,500	$6,200

Numbers are subject to rounding

PRIVATE-SECTOR FINANCING

As the system develops over time, it will generate financial value through the positive net operating cash flow. Once the IOS begins operation, allowing high-speed passenger service revenue forecasts to be demonstrated, the IOS is projected to have a material value to a potential private-sector investor as a stand-alone service.

When the IOS is demonstrating strong ridership and revenues, as forecasted, along with overall strong asset operational performance, the private sector also is expected to have interest in investing in the Bay to Basin phase of the system, which will help fund the completion of the Bay to Basin phase. The amount of additional financing to be supported by future IOS and Bay to Basin revenues would be determined based on the private sector's valuation of the future cash flows from the expansion of the system.

The financing transactions for each phase of system expansion are likely to be structured as a combination of private debt financing, federally subsidized loans or other financing tools and private equity. The structures for both public and private investment have yet to be fully determined but may include a combination of revenue risk-based transactions and availability payment-based transactions, depending on the specific system component being procured.

The financial analysis performed resulted in a range of estimates for the amount of potential investment that could be secured based on a number of discount rates – from \$6.2 billion to \$12.4 billion.

The analysis has been based on the discounting of the net operating cash flow after capital replacement at three illustrative discount rates: 8 percent, 11 percent and 14 percent. The discount rate applied by the private sector in valuing future net operating cash flow is based, in large part, on the level of risk transferred to a private sector partner. For example, it is more

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<u>Appendix B</u>

Analysis Of The New CHSRA Funding Contribution Plan (FCP) of December 2013

Appendix B
Analysis Of The
New CHSRA Funding Contribution Plan (FCP)
of December 2013

William Warren

February 20, 2014

Overview - On February 20, 2014 the CHSRA sent a letter to the FRA enclosing the latest Funding Contribution Plan (FCP), which is dated December 31, 2013, v2.4. This FCP Report dated December 2013, with a notation that it was revised on February 20, 2014.

The cover letter speaks to the intention of the CHSRA to fund the ICS/FCS initially though the use of Cap and Trade funds, especially in the California Fiscal Year 2015 (July 1, 2014 to June 30, 2015), until the lawsuits surrounding the use of Prop 1A are resolved.

What is apparent in the following analysis of the differences between the December 2012 FCP and the December 2013 FCP is the significant reduction in State of California funding for the HSR project over the 2013 to 2016 period and a corresponding increase in the FRA funding of the construction project over this same period.

Three Graphs - Three graphs attached accompany this memo. The first graph, Exhibit 1, shows that the cumulative spending from all sources to build the ICS/FCS will not materially change over the next seven years.

The second graph, Exhibit 2, shows that Federal spending is projected to decrease somewhat in the fiscal year ending this June 30, 2014 (FY14) due to an overall slower spending rate in the current fiscal year. However the federal contribution increases dramatically over the FY15 to FY17 fiscal years when compared to the FCP of December 2012.

The third graph, Exhibit 3, shows an equivalent decrease in State spending in FY15 through FY17. Note that by the end of FY17 (June 30, 2017), the State will have contributed almost $1 Billion less than they had committed to contribute in the December 2012 FCP.

Four Tables - The details of this "Federal Funds First" plan are shown on three separate pages of tables.

The first table, Exhibit 4, records the spending that was committed to in December 2012, with significant spending by the State starting in the forthcoming fiscal year (July 2014 thru June 2015). The bottom two rows of the table show spending on a cumulative basis would have been at about the correct matching percentages by the end of FY15 (July 2015).

The second table, Exhibit 5, shows the December 31, 2013 FCP. No Prop 1A funds are committed until FY16, but the federal spending remains high during FY15 and FY16. Also note that this new FCP reflects the intention to provide $250 Million of State Cap and Trade funds and $52 Million of Local funds to be made available in the upcoming FY15 (July 2014 to June 2015). There are no details as to the source of these committed "Local" funds. The bottom two rows of the table show spending on a cumulative basis will not be at about the correct matching percentages until the end of FY18 (July 2018).

The third table, Exhibit 6, shows the net effect of these changes from the 2012 FCP to the 2013 FCP. Comparing them, the significant reduction in spending is in Prop 1A funds, $180 Million in FY14 (ending June 30, 2014) and the $823 Million in FY15 (ending June 30, 2015). Offsetting this reduction of about $1 Billion in State contribution perhaps is the State's contribution of $250 Million of Cap and Trade funds and $52 Million of a "Local" funding source (not identified). At the same time the Federal contributions increase by $511 Million in FY15, $329 Million in FY16, and $349 Million in FY17.

The fourth table, Exhibit 7, shows that there is a very short spending "holiday" in the December 2103 FCP. The State's contribution of $180 Million in the last quarter of the current fiscal year, FY14 (April 1, 2014 to June 30, 2014) has been eliminated. However, the State's contribution during the next fiscal year, FY15, is to be made monthly and this is shown on a quarterly basis in Exhibit 7. Starting in the July 2014 to September 2014 quarter, the State proposes to contribute $135 Million.

In this next fiscal year, FY15, the State intends to spend $0.9 Billion of combined federal and State funds. In the following three fiscal years, FY16 to FY18, the State intends to spend $4.4 Billion of combined federal and State funds.

In the past three fiscal years, the State has spent about $0.7 Billion of combined Federal and State funds. This is a very dramatic increase in spending, over a very short time.

Also, note that the Federal FY10 funds have not been brought forward to support the construction of the portion of the ICS/FCS north of Fresno. This portion of the ICS/FSC, known as CP1A and CP1B are eligible for FY10 funds, but not ARRA funds. ARRA funds are legally only to be spent between Fresno and Bakersfield, not north of Fresno. (See the third bullet on page 80 of the December 2012 Amendment 5 of the FRA Agreement.)

Conclusion – One year after the December 2012 FCP, the December 2013 FCP shows the State has removed a heretofore commitment to spend $180 Million in FY14, and $823 Million in FY15. There are intentions to perhaps provide $302 Million of non-Prop 1A funds, to offset some of the $1 Billion elimination.

By the end of FY15, 16 months from now, the FRA will have provided a cumulative amount of $1.3 Billion, up from the planned cumulative amount of $1.0 Billion in the December 2012 FCP.

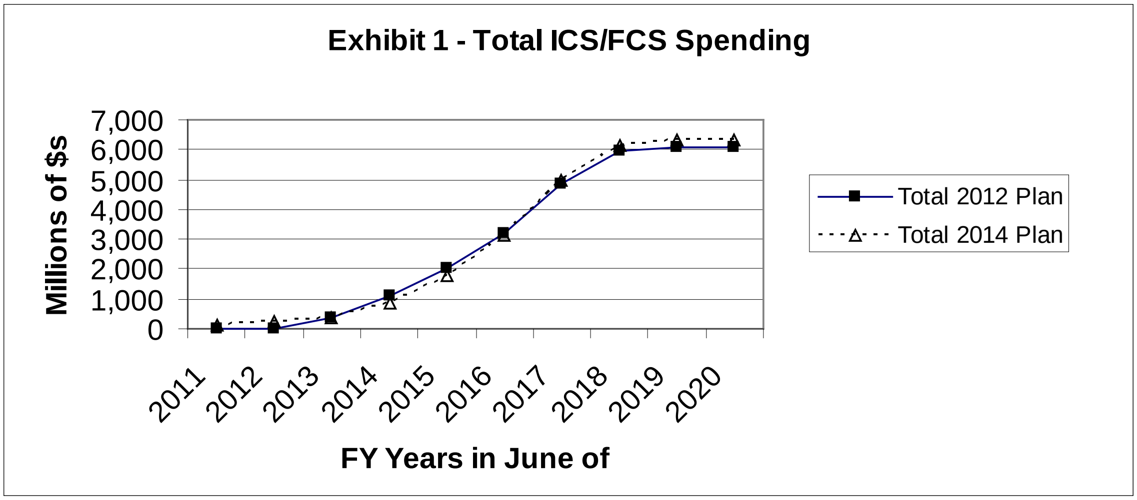
Exhibit 1 - Total ICS/FCS Spending
Millions of $s
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
2011 2012 2013 2014 2015 2016 2017 2018 2019 2020
FY Years in June of
Total 2012 Plan
Total 2014 Plan

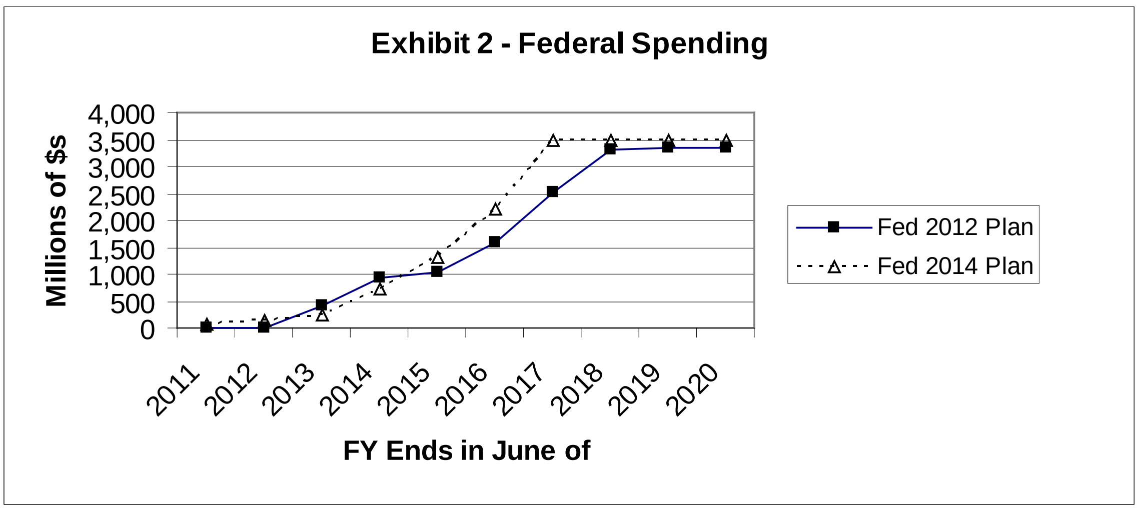
Exhibit 2 - Federal Spending
Millions of $s
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
2011 2012 2013 2014 2015 2016 2017 2018 2019 2020
FY Ends in June of
Fed 2012 Plan
Fed 2014 Plan

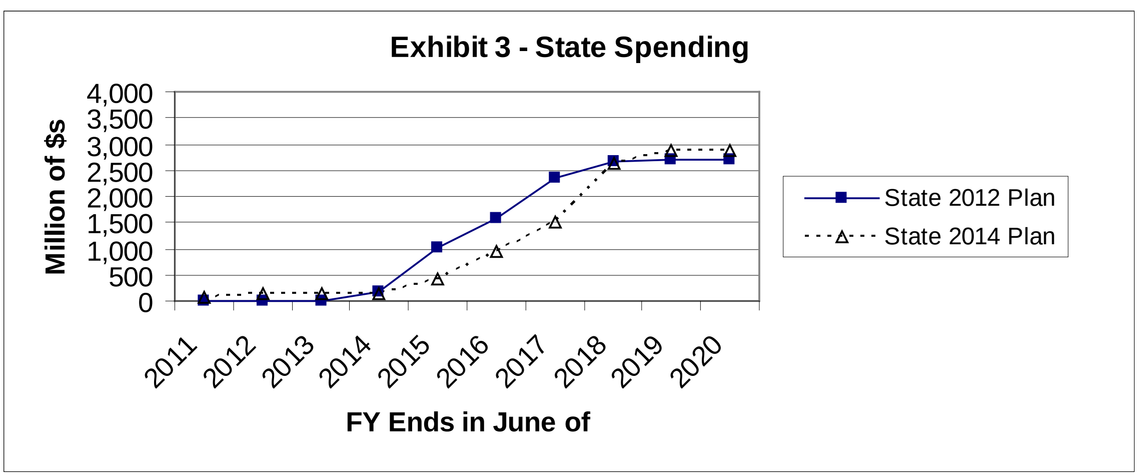
Exhibit 3 - State Spending
Million of $s
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
2011 2012 2013 2014 2015 2016 2017 2018 2019 2020
FY Ends in June of
State 2012 Plan
State 2014 Plan

Exhibit 4 - December 2012 FCP for Amendment 5 To FRA Agreement Authority's ICS Construction Spending Plan to Match FRA Funds $, in Millions (000,000's)										
Fiscal Years July to June	2010-2011	2011-2012	2012-2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018 - 2019	2019-2020
Uses of Funds			$398	$707	$926	$1,132	$1,715	$1,103	$73	
Sources of Funds										
ARRA - Fed			$398	$527	$103	$573	$813			
FY10 - Fed							$103	$795	$31	
Prop 1A - State			$0	$180	$823	$559	$799	$308	$42	
Data above from "Exhibit 3, page following page 94" of FRA Agreement Amendment 5, December 2012.										
Additional analysis prepared from the data above for use in this Analysis										
Cumulative Uses of Funds			$398	$1,105	$2,031	$3,163	$4,878	$5,981	$6,054	
Cumulative Sources of Funds										
ARRA - Fed			$398	$925	$1,028	$1,602	$2,414	$2,414	$2,414	
FY10 - Fed							$103	$898	$929	
Prop 1A - State			$0	$180	$1,003	$1,562	$2,361	$2,669	$2,711	
Total			$398	$1,105	$2,031	$3,163	$4,878	$5,981	$6,054	
Cumulative Prop 1A Match										
ARRA - Fed			0.0%	16.3%	49.4%	49.4%	49.0%	48.6%	48.9%	
FY10 - Fed						0.0%	30.0%	30.0%	30.0%	

Exhibit 5 – December 2013 (Revised February 2014) FCP for Amendment 5 to FRA Agreement Authority's ICS/FCS Construction Spending Plan to Match FRA Funds $, in Millions (000,000's)										
Fiscal Years July to June	2010-2011	2011-2012	2012-2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018 - 2019	2019-2020
Uses of Funds	$132	$127	$127	$454	$916	$1,397	$1,833	$1,134	$223	$5
Sources of Funds										
ARRA - Fed	$66	$63	$127	$454	$614	$881	$348			
FY10 - Fed						$12	$917			
Prop 1A - State	$66	$63	$0	$0	$0	$504	$569	$1,334	$223	$5
Cap & Trade - State					$250					
Local Funds - State					$52					
Data above from CHSRA Funding Contribution Plan Report Dec 2013 v2.4, page 12 of 22, per letter to FRA, Feb.20, 2014										
Additional analysis prepared from the data above for use in this Analysis										
Cumulative Uses of Funds	$132	$259	$385	$839	$1,755	$3,152	$4,985	$6,119	$6,342	$6,347
Cumulative Sources of Funds										
ARRA - Fed	$66	$129	$259	$710	$1,324	$2,204	$2,553	$2,553	$2,553	$2,553
FY10 - Fed						$12	$929	$929	$929	$929
Prop 1A, C&T, Local - State	$66	$129	$129	$129	$431	$935	$1,504	$2,638	$2,861	$2,866
Total	$132	$259	$385	$839	$1,755	$3,152	$4,985	$6,119	$6,342	$6,348
Cumulative Prop 1A Match										
ARRA - Fed	50.0%	50.0%	33.6%	15.4%	24.6%	29.7%	30.2%	46.7%	49.1%	49.2%
FY10 - Fed						30.0%	30.0%	30.0%	30.0%	30.0%

Exhibit 6 - Changes From December 2012 to December 2013 FCPs for Amendment 5 to FRA Agreement
Authority's ICS/FCS Construction Spending Plan to Match FRA Funds
$, in Millions (000,000's)

Fiscal Years July to June	2010-2011	2011-2012	2012-2013	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018 - 2019	2019-2020
Uses of Funds	$132	$127	-$271	-$253	-$10	$264	$119	$31	$150	$5
Sources of Funds										
ARRA - Fed	$66	$63	-$271	-$74	$511	$307	-$464			
FY10 - Fed						$12	$813	-$795	-$31	
Prop 1A - State	$66	$63		-$180	-$823	-$55	-$231	$826	$181	$5
Cap & Trade - State					$250					
Local Funds - State					$52					

Data above from CHSRA Funding Contribution Plan Report Dec 2013 v2.4, page 12 of 22, per letter to FRA, Feb.20, 2014 less the data from "Exhibit 3, page following page 94" of FRA Agreement Amendment 5, December 2012.

Exhibit 7 - Required State Contribution in FY 15, in Million's from December 2013 FCP for Amendment 5 to FRA Agreement

Time Period	Cap & Trade plus Local
July 2014 to September 2014	$135
October 2014 to December 2014	$86
January 2015 to March 2015	$48
April 2015 to June 2015	$33
Total Fiscal 2015	$302

Regarding: California High Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section. (STB Finance Docket No. 35724 (Sub-No. 1))

Subject: Opposition and Protest Reply to the California High Speed Rail Authority's Petition for Exemption

Filed By: William H. Warren, Filing ID Number of 235332, March 7, 2014

<u>Attachment 1</u>

DOT/FRA Has Several Reasons To Withhold Further Funding From California's High-Speed Rail Project, dated November 2013.

DOT/FRA Has Several Reasons To Withhold Further Funding From California's High-Speed Rail Project

A Briefing Paper - November 2013

Prepared for a meeting with: Mitchell Behm
Assistant Inspector General,
US Department of Transportation

Prepared by: William Grindley
William Warren

Thirty-five papers by the same authors on the California high-speed rail project can be found at www.sites.google.com/site/hsrcaliffr and also at www.cc-hsr.org: then go to Financial Reports.

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PUBLICATIONS

All available at www.sites.google.com/site/hsrcaliffr and at
www.cc-hsr.org, then go to Financial Reports

Major Reports on High Speed Rail by the Authors:
– The Financial Risks of California's Proposed High Speed Rail Project (Oct 2010)
– A Financial Analysis Of The Proposed California High-Speed Rail Project (Jun 2011)
– Revisiting Issues In the October 2010 Financial Risks Report (Sep 2011)
– Twelve Misleading Statements on Finance and Economic Issues in the CHSRA's 2012 Draft Business Plan (January 2012)
– California High-Speed Rail Authority's 2012 Draft Business Plan – Assessment: Still Not Investment Grade (January 2012)
– A Partial Catalog of Inappropriate, If Not Illegal Actions in the Conduct and Execution of California's Proposed High-Speed Rail Project – Volume I, March 2012.
– The CHSRA Knows Their Proposed High-Speed Train Will Forever Need An Operating Subsidy (March 2012)
– A Partial Catalog of Inappropriate, If Not Illegal Actions in the Conduct and Execution of California's Proposed High-Speed Rail Project – Volume II, November 2012.
– To Repeat: The CHSRA Knows Their Proposed High-Speed Train Will Forever Need An Operating Subsidy (December 2012)

Briefing Papers:
– Dubious Ridership Forecasts (Oct 2010)
– Six Myths Surrounding California's High-Speed Rail Project (Jan 2011)
– Seven Deadly Facts For California's High-Speed Rail Authority (Jan 2011)
– A Train To Nowhere But Bankruptcy (Feb 2011)
– Big Trouble For California's $66 Billion Train (Mar 2011)
– Will The Train Benefit California's Middle Class? (Apr 2011)

Brief Notes: Twenty-three one page, single subject papers on various aspects of financial issues related to the proposed high-speed rail system, Oct 2010 - Aug 2011

Any fault found in this report is solely the responsibility of the Authors.

Introduction and Overview

The December 2012 Amendment 5 to the Grant and Cooperative Agreement (Agreement) between the Federal Railroad Administration (FRA) and the California High-Speed Rail Authority (CHSRA) allowed the project to move forward on the basis of a "federal funds first" understanding, shifting financial risks to the FRA and contravening DOT's prior ruling that federal and State funds were to be spent simultaneously.[1] That Amended Agreement laid down at least three provisions for continued FRA involvement:

1) that "*The Grantee* [the Authority] *may not obligate or expend any funds (federal, state or private) . . commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written approval of a financial plan . ."* Similarly the Agreement says, "*Prior to . . commencing construction for the Project or any component of the Project, the Grantee shall submit all necessary environmental documentation . . and receive FRA's written confirmation that relevant Project environmental reviews have been completed . .* "
2) that the project "*appropriately allocate risk between the parties*"
3) that the CHSRA; "*engage contractors through the competitive bidding process established by the State of California for all construction activities"* as well as "*in compliance with federal regulations."*

The California court intervened eight months after those provisions to the Agreement were agreed upon.[2] On August 16th 2013 a Sacramento Superior Court judge ruled the CHSRA had abused its power in November 2011 when it approved the high-speed train's Funding Plan, because it:

1) had only $6 Billion of the $31.5 Billion it claims is needed to build the Initial Operating Segment (IOS) and;
2) had no more than twenty-four miles of the IOS' 300 miles environmentally certified and;
3) had never published, even in draft form, or certified a statutorily required second funding plan.[3] Under California law (AB 3034) no State money can be spent for construction until the required second (or updated) funding plan has been prepared, submitted, and approved.

CHSRA's counsel, California's Attorney General (AG), did not contest the ruling. Its defense was that ONLY federal funds were being spent on construction, and since the suit concerned only the use of State Prop1A bond funds, the ruling did not apply. However the AG conceded that by April 2014 the State must spend Prop1A funds to match funds based on FRA's "advanced payment" formula.[4]

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[1] See DOT/FRA Grant/Cooperative Agreement FR-HSR-0009-10-01-05, signed December 5, 2012. The 'equal share per dollar spent' directive was in a May 25th 2011 letter to then-CHSRA CEO Roelof van Ark from then-DOT Under Secretary for Policy, Roy Kienitz.
[2] Superior court, County of Sacramento documents on this trial can be found at: https://services.saccourt.com/PublicDMS/Search.aspx – Case #34-2011-00113919
[3] See: Subsection (d) of the California Streets and Highway Code §2704.08
[4] See Section 7 of the December 2012 Agreement that says, "*Payment . . shall be made on reimbursable basis*

The judge's ruling changes the way FRA should view its relationship with the Authority. The 2012 Agreement insisted CHSRA could not spend federal or state money for construction without FRA's approval. Exhibit 3 of the Agreement shows that FRA allegedly pays all the constructions costs of CP1, the only portion of IOS with environmental clearances, so FRA must have accepted that CHSRA's 2011 Funding Plan was legal. Also in December 2012, the FRA apparently accepted that CHSRA's actions conformed to State law because FRA payments were based on an "advance payment" basis – whereby supposedly FRA paid (and still pays) all the construction costs in FY13, and will for much of FY14.[5] The Agreement also implies that FRA accepted; ". . *that relevant Project environmental reviews have been completed . ."* for the 300 miles of the IOS prior to the start of construction. They weren't completed, and FRA seems to be party to the Authority's illegal actions by "fronting" the construction costs via the "advanced payment" formula, and accepting CHSRA's version of its environmental certifications as being legal.

Perhaps it is time for FRA to reconsider its contractual responsibilities under the Cooperative Grant Agreement. Whether knowingly or not, the Authority violated State law. That action eroded the foundations of the Agreement's provisions governing the expenditure of Federal and State monies since the Agreement made FRA party to the Authority's conformance with State law.

Much of FRA's committed funds are to be spent to build Construction Package 1 (CP1), the first twenty-nine miles between Madera and Fresno. In all probability California's legally binding rules for contract awards were repeatedly violated in selecting the contractor for CP1. The Authority's actions directly implicate FRA by FRA being party to the Agreement, and to date the only source of construction funds. In short, the court's ruling has changed the ground rules for FRA's relationship with the Authority and serious questions about the validity of the Agreement need answers.

The only money currently at risk is FRA money for construction. There is little hope for an exit from the time-dependent conundrum the court ruling imposed on the Authority's access to Prop1A funds for construction. But the risk to FRA goes further. FRA's oversight of the Authority's actions appears short of legal due diligence. By binding itself to and funding the Authority's actions, the FRA has become party to the legality, or illegality, of those actions. Now a court has said specific actions by the Authority were illegal. More such rulings may be forthcoming. FRA's legal position seems cloudy at best.

These are serious charges. The facts and assertions behind them are analyzed in the following pages.

. ." For the April 2014 use of Prop1A bonds; see: Declaration by Dennis Trujillo in Opposition to Plaintiffs/Petitioners' Request For Remedies dated October 10th 2013.

[5] By April 2014 the payment formula changes to a "reimbursable basis" with FRA only paying its portion after the Authority has already paid all the invoices it submits to FRA and FRA has audited them Because the Authority does not start to make its "matching payments" requirements until April 2014, the mix of Federal and State funds contributed do not reach the agreed upon percentages until about the end of FY15 (June 2015).

1. THE COURT'S RULING AND THE AGREEMENT'S LEGAL STANDING

FRA's Unclear Legal Position in Continuing To Fund The Authority – On August 16th 2013 California Superior Court Judge Michael Kenny ruled the Authority was not in compliance with AB304 when it:

a) certified it had in hand, or had committed to it, all the funds needed to build the Initial Operating Segment (aka Usable Segment) – estimated by the Authority to be $31.5 Billion – while it had only had a total of about $6.25 Billion of FRA and Prop1A bond funds; and

b) certified it had, or would have, all environmental clearances for a section of the IOS certified prior to commencing construction when it only had 24 miles between Madera and Fresno certified despite the legislative demand it have all 300 miles of IOS's environmental clearances certified before starting construction; and

c) had never submitted, nor had approved by a public authority, a second funding plan prior to starting acquisitions as required by AB3034.

Perhaps FRA should review the impact of that ruling on its continued funding of the Authority, in order to understand whether the August 2013 court ruling against the Authority – unchallenged by the Attorney General. The ruling changes the relationship between the Grant Agreement's two parties and demonstrates that FRA's continued funding of the project, requiring the Authority to conform with its rules, may be contractually defective. Several examples:

1.1 The validity of the financial plan – If the FRA approved the Grantee's (Authority's) financial plan, that step seems legally questionable now that the court has ruled that financial plan was illegal. According to Section 4, Financial Plans, of the Agreement;

"*The Grantee* (the Authority) *may not obligate or expend* ***any funds (federal, state or private) for final design and/or construction of the Project****, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving FRA's prior written* ***approval of a financial plan*** *. ."* [6] [Comment: The court found that the Authority's approval of its first financial was illegal, and is without a statutorily required second funding plan. This should have a decisive impact on FRA.]

In specifying that the Authority cannot spend State funds for design and/or construction, the FRA seems to be in violation of the court's August 2013 ruling. While it claims it is not spending Prop1A funds on construction, CHSRA continues to spend both FRA and Prop1A money on design, and has commenced spending only FRA money on construction.

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[6] Grant/Cooperative Agreement Number, FR-HSR-0009-10-01-05, AMENDMENT NO. 5, December 5th 2012, Section 4, PDF pg. 11-12. It is left to FRA's judgment whether the Authority's financial plan complied with the requirements of section 2.2 of the High Speed Intercity Passenger Rail (HSIPR) Program interim guidance published in the federal Register on June 23, 2009 (74 FR 29900) and is consistent with the requirements described in Attachment 3A Task 5 of the Agreement.

1.2 The validity of CHSRA's environmental clearances – Another area of FRA's involvement with the Authority's spending both Prop1A and FRA money involves environmental clearances. The Agreement says:

*"Prior to . . commencing construction for the Project or any component of the Project, the Grantee shall submit **all necessary environmental documentation** . . **and receive FRA's written confirmation that relevant Project environmental reviews have been completed** . . **Grantee may not obligate or expend any funds (federal, state or private) for final design** and/or construction of the Project, or commence any part of final design and/or construction for the Project or any component of the Project, without receiving such written confirmation from FRA."* [7] [Comment: This is a key phrase in the Agreement: it tracks exactly the August 16th 2013 court ruling that held the Authority was in serious violation of State law (AB3034) because it had completed only twenty-four of the three hundred miles of the Useable Segment (the IOS).]

1.3 The validity of CHSRA's acquisitions, engineering and construction expenditures – Caution about FRA's role in continuing to fund property acquisition. While the Grantee (CHSRA) may have certified it completed all the documentation needed by NEPA and CEQA, the court's finding that the CHSRA did not have all environmental clearances for the entire 300 miles of the IOS casts a shadow over the legality of FRA and Prop1A funds being used for property acquisition. In doing so, that ruling reflects Section 9 of the Agreement that says:

*"The Grantee may **not obligate or expend any funds (federal, state, or private) to acquire any real property for the Project. . . for the associated acquisition step** is by then completed as determined in writing by FRA **and any required California Environmental Quality Act (CEQA) documentation** for the associated acquisition step . ."* [8]

These restrictions on the Authority's spending FRA and State money also apply to final design and engineering (Section 6 of the Agreement) as well as the construction (Section 7) where FRA specifically prohibits the expenditure of *". . any funds (federal, state or private) for final design and/or final engineering . . ."* and *"may not obligate or expend any funds (federal, state or private) for construction of the Project, as defined in the Statement(s) of Work . ."* [9]

Summary thoughts on the Agreement's uncertain legal status – If FRA assumed the Authority's funding plan was legally sanctioned to pay for design, acquisitions and construction, that belief and trust was misplaced. Continuing to advance the Authority funds for those activities puts FRA's role in the project into legal limbo. Clarifying that status and taking action to rectify it should be a high priority for FRA. In short, FRA should seriously review the Agreement because the August 16th ruling pointed out the non-compliance of the Authority with the State laws it is obliged to observe.

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[7] Grant/Cooperative Agreement Number, FR-HSR-0009-10-01-05, AMENDMENT NO. 5, December 5th 2012, Section 5, PDF pg. 12.
[8] Grant/Cooperative Agreement Number, FR-HSR-0009-10-01-05, AMENDMENT NO. 5, December 5th 2012, Section 9, PDF pg. 13.
[9] Grant/Cooperative Agreement Number, FR-HSR-0009-10-01-05, AMENDMENT NO. 5, December 5th 2012, Section 6 and Section 7, PDF pg. 12-13.

2. FRA'S PRESENT AND POTENTIAL FINANCIAL EXPOSURE

On FRA's Principles In The Agreement And Its Concerns About Sharing Financial Risks – California garnered over a third of nationwide ARRA grants for high-speed rail. FRA made these awards in part because Californians showed they were willing to share the risks with FRA by voting in 2008 for up to $9 Billion for Prop1A bonds to match other public and private funds for high-speed rail.

An 'equal share per dollar spent' understanding was codified in early 2011 by DOT.[10] However, at the close of 2012, that directive was no longer in force, and California presently has no 'skin in the game.' That doesn't seem to reflect the policy of the December 2012 Amended Agreement No. 5, which states that the FRA and CHSRA would *"appropriately allocate risk between the parties."* There is no risk sharing.

2.1 The Scale of FRA's Financial Risks – Today, ALL of the 'up front' financial risks to construct the Initial Construction Sector (ICS) fall on the FRA.[11] No State of California Prop1A bond funds are allegedly spent or to be spent matching federal construction funds until, at the latest, April 2014.[12]

> As of June 30th 2013 the FRA had given the California High-Speed Rail Authority (CHSRA) $275 million. As of early November, the FRA will have given the CHSRA an estimated $500 million: by early February 2014 an estimated $800 million and by April 2014 about $1Billion.

Some federal money has already been used illegally.[13] Only the $929 million of FY10 federal funds were supposed to be spent constructing north of Fresno.[14] The

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[10] The 'equal share per dollar spent' directive was in a May 25th 2011 letter to then-CHSRA CEO Roelof van Ark from DOT Under Secretary for Policy, Roy Kienitz.

[11] See the FRA-CHSRA Agreement. The Initial Construction Section' (ICS) is the first 130 miles (Madera to Bakersfield) of the 300-mile Initial Operating Segment (IOS) of California's high-speed rail project.

[12] See Tos, Fukuda, County of Kings vs CHSRA et al, Declaration by Dennis Trujillo in Opposition to Plaintiffs/Petitioners' Request For Remedies dated October 10th 2013, which on page 4 says; "*Thus, the Authority estimates it can spend only federal funds to finance the project (including the costs of the contracts) until approximately April 2014 before the amount of state funds spent on the high-speed rail program equals the amount of federal funds spent."* At that point, the only source of funds to match federal funds will be Prop1A bond funds, which if disallowed from use by the court, will shift all the risk to the FRA. Superior court, County of Sacramento documents on this trial can be found at: https://services.saccourt.com/PublicDMS/Search.aspx – Case #34-2011-00113919

[13] See: Diminishing Prospects For the CHSRA's Initial Construction Section; A Briefing Paper, William Grindley and William Warren, July 29th 2013. Found at: www.sites.google.com/site/hsrcaliffr and at www.cc-hsr.org; then go to Financial Reports.

[14] Page 47 [PDF 49] of the December 2010 Agreement (Amended No1) says; *"Because the Project is more expensive than any single funding source available, the Project scope is separated into two geographic sections that are integral and interdependent. In combination with each other, they will comprise and describe the entire initial Central Valley Project. This Agreement covers final design and construction activities between Fresno and Bakersfield (Kern County), funded with $2.32 billion11 in 2009 ARRA funds that are being awarded through this Agreement. Final design and construction activities between Madera County and Fresno will require up to $715 million in Federal funding and are anticipated to be addressed in a future FRA obligation of HSIPR funding."* This qualification is in every successor Agreement, and only changes the dollar amount for Madera to Fresno to $928.6 million. The November 18th 2011 Amended Agreement [PDF 33] says; *"On October 28, 2010, Secretary LaHood announced the selection of a Central Valley project section to receive an additional $715 million in funding from the Transportation, Housing and Urban development and Relations Appropriations Act for 2010 (Div. A of Consolidated Appropriations Act, 2010 (Pub. L. 11-117, December 16, 2010))* ***(FY 10 Appropriations)."*** Later on that same page it says; *"This Cooperative Agreement (Agreement) obligates the FY 10 funding from both the October 2010 and May*

DOT/FRA Grant Agreement and the current lack of environmental clearance effectively restrict ARRA funds to use south of Fresno. Yet ARRA funds were used illegally for design, planning, and acquisition north of Fresno, while Exhibit 3 of the Grant Agreement shows only ARRA funds being spent from 2012 to 2016 for Fresno northward.

Quoting from the Agreement, the court ruling seems to indicate a, *". . material adverse change in pending litigation, . . . that might prevent the Grantee from securing and delivering the required matching contribution"* of the type cited in the December 2012 Amended Agreement.[15] Only the FRA knows whether the CHSRA provided FRA *"written notice"* but the FRA has the right to take action, *"including termination"* of funding if it so determines. Although the Agreement states that it is to *"appropriately allocate risk between the parties"* the Agreement's Funding Contribution Plan allocates disproportionate financial risks to FRA.[16]

The California court has the jurisdiction to prohibit the use of Prop1A funds for construction, a fact uncontested by California's Attorney General (AG). Plaintiffs asked the court to block use of Prop1A funds until the Authority rectifies the deficiencies pointed out by the court. The final ruling is likely to be soon. [17]

There is no known source of State funds other than Prop1A bonds to match FRA funds already granted the Authority, and those may be unavailable even sooner.[18] As Appendix A shows, Prop1A monies are the only source of matching FRA funds that was contemplated in any version of the Agreement with the Authority, including the December 2012 Agreement. There is no provision in California's FY14 budget for other monies, and no legislative bill has been introduced to use other than Prop1A monies to match FRA funds during FY15. Prop1A monies remain the sole source of funds to meet the key FRA provision that it would advance CHSRA monies, and that Prop1A monies would be used later to match its "federal funds first" approach.

The Authority may propose to use the State's General Fund as a "temporary" substitute for Prop1A money. That approach brings with it several problems. First, the 2008 existence of Prop1A money assured the FRA in 2010 that

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*2011 selections totaling **$928, 620,000** which will be matched in part with state funds."* This explains the change from the $715M to the $929M for monies exclusively devoted to Madera to Fresno.

[15] The full quotation from page 93 of the Amended Agreement of December 2012 reads *"The Grantee shall immediately provide FRA with written notice if at any time there is a material adverse change in pending litigation, including the timeline for resolution, or any other circumstances that might prevent the Grantee from securing and delivering the required matching contribution. Upon receiving such written notice, FRA may require that this Agreement be amended to reflect such change or take any other action permitted under this Agreement, including but not limited, to exercise of rights, including termination, pursuant to Attachment 2, Section 23."*

[16] The full quotation from page 93 of the Amended Agreement of December 2012 reads; "*The Parties further acknowledge it is important for the Funding Contribution Plan to appropriately allocate risk between the parties to this Agreement."* Likewise, the Agreement's Funding Contribution Plan, in its note on the reason for 'blue' typeface clearly reflects that no later than April 2014 the State must begin to 'match' FRA contributions to keep the Agreement in force.

[17] The final hearing on the Writ Mandamus part of Tos, Fukuda, County of Kings vs CHSRA will be on November 8th 2013. The judge has 90 days to issue an ruling – i.e. early February 2014, less than 60 days before the State is required by FRA to begin to 'match' federal monies.

[18] While the Attorney General may appeal, it did not contest the court's ruling concerning CHSRA's violations of State law, thereby assuring that Prop1A bond monies from an illegal funding plan will be unavailable for construction. The AG's 'Remedies' argument was that the CHSRA was only spending FRA monies, not yet spending Prop1A monies. However, their sole supporting declaration, by CHSRA's Chief Deputy Director, Dennis Trujillo, clarified that by April 2014, the project will need Prop1A funds.

Californians had "dedicated -to-high-speed-rail-only" funds – guaranteed collateral – to match FRA grants. Second, besides the fact that accepting a new funding approach would make mockery of the outsized ARRA and FY10 awards to CHSRA, it would violate the state's Constitution of a commitment without an appropriation. Third, the present State Administration's fervor for this megaproject may not last, as a statewide majority now opposes the project, and politicians now realize the liability of their support. [19]

Further still, analysis of Construction Package 1 (CP1) indicates construction costs in excess of $2 Billion for the first twenty-nine miles of the 130 miles (22%) of the Initial Construction Section (ICS).[20] Yet, the only federal funds legally available for north of Fresno are the $929 Million from the FY10 grant solely for construction north of Fresno. CHSRA admits that they will need Prop1A bond funds as early as April 2014 ((four months hence).[21] At the latest, eight months hence (start of California's FY14), the State will have to match the federal contribution (to the amount of about $823 Million in FY14-15), and the only source is Prop1A bonds – probably prohibited by remedy to be ordered by the court, based on the uncontested the 16 August 2013 court ruling.

More immediately and perhaps worse for the ICS's future is that CP1's total costs suggests the 130 miles from Madera to Bakersfield would be $7-$9 Billion.[22] That is half again as much as the available $6 Billion of combined funds. Even if the Cooperative Agreement is altered to allow both FY10 funds and ARRA grants to be used north of Fresno, even the remaining $2.25 Billion of FY10 and ARRA grants matched with an equal State contribution would not bring the ICS more than about ninety miles of conventional track; still thirty to forty miles short of Bakersfield.[23] The result would be nothing more than a conventional rail bed that is neither electrified, nor in any other way prepared for high-speed trains – built with FRA money.

These conclusions were validated by an Environmental Impact Report (EIR)

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[19] The most recent poll, conducted by USC Dornsife and the L.A. Times says 52% of Californians no longer support the project and only 43% do. See: http://www.latimes.com/local/la-me-poll-high-speed-rail-20130928,0,5468230.story#axzz2jyp7UHiR For a picture of the dubious political future for the project, in a May 2013 interview, Lt. Governor Gavin Newsom said; *"No other high speed rail system in the world operates without a subsidy" See:* http://www.myfoxla.com/story/22136329/t-boone-pickens-gavin-newsom-weigh-in-on-bullet-train

[20] In addition to the Tutor Perini $985 Million contract to build track bed and the agreement with Caltrans for $226 Million to move parts of Highway 99 to build track bed, there are $441 Million of contracts to move other infrastructure, including irrigation channels, local roads, AT&T and PG&E infrastructure.

[21] Op Cit. See Tos, Fukuda, County of Kings vs CHSRA et al, Declaration by Dennis Trujillo in Opposition to Plaintiffs/Petitioners' Request For Remedies dated October 10th 2013, page 4

[22] To review how the $7 Billion was derived at see: Appendix B of Diminishing Prospects For the CHSRA's Initial Construction Section; A Briefing Paper, William Grindley and William Warren, July 29th 2013. Found at: www.sites.google.com/site/hsrcaliffr and at www.cc-hsr.org; then go to Financial Reports. Using a proportional ratio method yields $9 Billion as follows: The $2 Billion for CP1 divided by CP1's 29 miles yields a per mile cost of $68.96 Million per mile – largely through agricultural land. When the project approaches and enters the City of Fresno, per mile costs will increase. However, using the conservative $68.96 Million per mile times the total 130 miles indicates the ICS will cost upwards of $8,895,500.

[23] Total federal funds available are $2.32 Billion of ARRA grants and $929 Million from the FY10 monies, totaling $3.25 Billion. The State can only equal that contribution. It has no statutory authority to use any more of the Prop1A bonds other than what 'outside' sources contribute – the sole source being FRA. Therefore the total amount available to build is no more than $6.5 Billion. To provide this total of $6.5 Billion, the State needs to authorize raising of its matching rate from 30% on some of the Grants to 50%. If CP1 costs $2 Billion, with the FRA and the State each providing $1 Billion, that leave $2.25 Billion of FRA funds available for the remainder of the 130 mile ICS.

approved at the Authority's November 7th 2013 Board meeting.[24] Ostensibly, the Report is about the route to be selected between Fresno and Bakersfield (F-B). This is the second part of the Initial Construction Segment (ICS) for which the Authority recently requested Statements of Qualification.[25] But it includes more 'seeds of havoc' when it estimates the second part of the ICS (F-B) will cost $7.2 Billion, even making the assumption that cost will make that portion ready for "high-speed rail."[26] But the ICS needs to be built only to conventional rail track standards to provide "Amtrak Ready" operations. Generally speaking, conventional rail track costs about 85% of high-speed ready track: so a conservative estimate is that the $7.2 Billion would only be about $6.1 Billion if it were built for "Amtrak Ready" operations. [27]

However, at least $2.7 Billion must be added to this $6.1 Billion conservative estimate to build the CP1 portion from Madera and around Fresno.[28] This suggests that for the ICS to be "Amtrak Ready" the cost will be about $9 Billion. This is at the upper end of previous estimates of $7-$9 Billion, and far exceeds the FRA grants of $3.3 Billion and the current matched Prop1A funds of $2.7 Billion – $6 Billion of available funds.[29] An "Amtrak Ready" ICS will never reach Bakersfield with existing funds or any foreseeable funds.

2.2 Two further risks to FRA's "fed funds first" policy – FRA is also exposed to two other kinds of financial risk: the first derives from the court decision that the Authority was out of compliance with State law, and the second that State law limits what can be spent of Prop1A's $9 Billion on pre-construction and acquisition activities.

2.2.1 FRA's financial risks from a court ban on use of Prop1A funds for construction – As calendar year 2013 closes, the Authority claims that Prop1A monies have been used only for pre-construction §2704.08 (g) and §2704.08 (h) administrative activities and none spent on constructing track beds or track.[30] It claims only FRA funds have been used for construction. But they admit that by April 2014, Prop1A money will need to be spent to match federal

[24] See section 3.5.4 on page 3-19 of the Authority's Environmental Impact Report to the Board and the FRA: "Fresno to Bakersfield Section - Staff Recommendation: Preferred Alternative", dated November 2013. This report is available at:
http://hsr.ca.gov/docs/brdmeetings/2013/brdmtg_Item2_Attach_Fres_Baker_Staff_Recommend_Prefer_Alternative.pdf

[25] On October 10th 2013, the CHSRA issued a "Request for Qualifications to Build Second Phase of High-Speed Rail, 60-Mile Stretch Toward Bakersfield" This portion of the ICS, called CP2-3 connects to CP1, which was awarded in early 2013. See: Authority Issues Request for Qualifications to Build Second Phase of High-Speed Rail, 60-Mile Stretch Toward Bakersfield at http://www.hsr.ca.gov/

[26] The $7.2 Billion is most likely the cost to provide complete electrification, train control and be ready to support high-speed rail operations.

[27] See: Appendix A of Diminishing Prospects For the CHSRA's Initial Construction Section; A Briefing Paper, William Grindley and William Warren, July 29th 2013. Found at: www.sites.google.com/site/hsrcaliffr and at www.cc-hsr.org; then go to Financial Reports. Appendix A shows that for CP1, the cost of building Amtrak Ready is 84% of the cost of building "HSR Ready".

[28] See: Diminishing Prospects For the CHSRA's Initial Construction Section; A Briefing Paper, William Grindley and William Warren, July 29th 2013. Found at: www.sites.google.com/site/hsrcaliffr and at www.cc-hsr.org; then go to Financial Reports

[29] Ibid

[30] However, in the final brief for the Remedies phase of the case of Tos, Fukuda vs CHSRA et al, the Plaintiffs found that not only had the Authority committed funds for both the construction of CP1, but also that in the FY13, the Authority had spent $4 Million on construction.

construction funds. By June 2014, about $1Billion of FRA money will have been spent.[31]

No Prop1A "matching" monies will be available if the court orders no §2704.08 (c) and (d) can be used for construction as the result of its August 2013 ruling.[32] Since FRA monies have already been spent on construction, pre-construction and administrative activities, the court ban could put FRA in the position of asking the State to find another source to reimburse about $800 Million that FRA would have advanced the Authority.

2.2.2 FRA's financial risks from AB3034's limits on spending by classification of use – Figure 1 details how AB3034 allocated Prop1A funds. There are four "buckets" – each defining how specific amounts of monies allocated to it by formula can only be used. Three of the four buckets (Figure 1, Purposes B-D) are for high-speed rail:

– 90% of $9 Billion ($8.1 Billion) for construction [§2704.08 (c) and (d)];
– 7.5% of $9 Billion ($675 Million) for pre-construction [§2704.08 (g)]; and
– 2.5% of $9 Billion ($225 Million) for administrative activities [§2704.08 (h)]

The fourth bucket of $950 Million is destined solely for the connectivity of conventional regional and commuter rail programs to high-speed rail.

California's Legislature built financial safeguards into AB3034 by virtue of these buckets– defining what must be spent on construction and limiting what could be spent on consulting engineers, managers and administrators. It would take a statewide re-vote on the project to move monies from one bucket to another, or increase the amount in any one of them. By virtue of the ceiling on each bucket, the FRA is exposed for any overage of the limit on the State's match of each bucket. FRA's only recourse would be to demand the State repay all or part, or withhold federal funds destined for other purposes.

Figure 1, cell C4 shows that at the end of California's FY13, June 30th 2013 about $332 Million has been spent from bucket (g), pre-construction and acquisition. About $343 Million of (g) funds were still available in FY14 to match FRA funds for pre-construction activities before the (g) ceiling ($675 Million) is reached. But the Authority has already committed to the FRA that over half of that ($180 Million) will match FRA funds by close of California's FY14. That leaves the State only $163 Million of §2704.08 (g) funds to be spent in FY15.

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[31] See Exhibit 3 of FRA Grant Agreement under Sources of Funds. ARRA totals $925,263,443.

[32] PDF pg. 6, Section 7, Payment Method, of the Agreement says; *"funding through FRA's Office of Financial Services, shall be made on reimbursable basis, whereby the Grantee will be reimbursed, after the submission of proper invoices, for actual expenses incurred."* If the State cannot reimburse such funds, the FRA faces the unenviable possibility of withholding federally funds, but subvented to the State or deny the State equal amounts of federal funds for highway and bridge construction.

Figure 1 Sources And Uses Of $9.95 Billion of Prop1A Bond Funds Approved In 2008 By California's Voters ($M=Millions, B=Billions)					
	1	**2**	**3**	**4**	**5**
Purpose	**Allocations of Prop1A Bond Funds**	**Subsection of 2704.08 S&H Code Allocations**	**Can be used to match FRA Funds?**	**Spent by CHSRA by June 30th 2013**	**Comments**
A. Connect HSR with existing rail systems	$950M	None. This is in AB3034 §2704.095	No	Unknown	Does not apply to FRA's HSIPR interests
B. Land acquisition and infrastructure construction	$8,100M	§ 2704.08 (c) and (d)	Up to 50% of total cost of a useable segment or corridor; ie IOS [33]	$4M recorded, but CHSRA has obligated >$1.2 B for construction	This is the focus of the Tos, Fukuda suit. Remedy ruling by 2/8/2014
C. Pre-construction engineering, environmental, and land acquisition costs for infrastructure	$675M	§2704.08 (g)	Probably up to 50% of total cost in a useable segment or corridor, ie. IOS	$332M spent.[34] Leaves a balance of $343M. CHSRA has committed $180M for FY14 in the FRA Agreement [35]	This leaves a balance of $163M for FY15. However, $823M of (g) funds are committed in FRA Agreement during FY15 [36]
D. Administrative costs	$225M	§2704.08 (h)	Doubtful	$118M spent.[37] $126M in FY14 budget is over-allocated	Does not apply to FRA's HSIPR interests

But the Agreement (Exhibit 3) says that during FY15, the State is committed to spend an additional $823 Million from §2704.08 (c) and (d) or (g).[38] Several problems for FRA arise from this commitment.

1. It is legally unclear if or when §2704.08 (c) and (d) funds will become available: without these, the $823 Million commitment cannot be met. The court will decide this while FRA alone keeps spending on construction.

2. Funds available under §2704.08 (g) will be "maxed out" at $675 Million (7.5% of $9 Billion) – most probably be spent early in FY15; if not by the end of FY14. <u>That $675 Million is all that is available to plan and acquire for the entire 520-mile LA to SF, Phase One high-speed rail project.</u> If it is spent just during building of the ICS, then the IOS, the Bay-to-Basin or the Blended System will have no pre-construction and acquisition monies available. FRA may not have noticed that the Authority may have overpromised what it can use from Prop1A to fund pre-construction activities with only $163 Million uncommitted at the

[33] AB3034 says that Prop1A bond funds *"shall not be used for more than 50 percent of the total cost of construction of each corridor or usable segment "*
[34] See Tos vs CHSRA Defendants' Remedy Brief, Exhibit 4, page 1, *"…under (g)…total bond funds expended…through FY 2012-2013 is $332 Million."*
[35] See Exhibit 3 of FRA Grant Agreement, FY13-14, under Sources of Funds, Prop1A is $180 Million.
[36] See Exhibit 3 of FRA Grant Agreement, FY14-15, under Sources of Funds, Prop1A is $823 Million.
[37] See Defendants' Remedy Brief in Tos, Fukuda, county of Kings vs CHSRA, Trujillo Declaration, page 4. *"$450 Million of state funds have been spent".* This total of $450 Million less the $332 Million spent on (g) expenditures leaves $118 Million of (h) expenditures.
[38] 2704.08 (c)(1) says; " . . proceeds of bonds authorized by this chapter for any eligible capital costs on each corridor, or usable segment thereof, identified in subdivision (b) of Section 2704.04, **other than costs described in subdivision (g)** . ."

start of FY15.[39] After that is spent, there is no §2704.08 (g) money.

3. Even if FRA were willing to change Exhibit 3's requirements for CHSRA's financial participation, neither FRA nor the Authority have the legal right to change California law limiting the sizes of the §2704.08 (g) and (h) buckets. They can only be changed by a ballot initiative as in 2008. Even in the unlikely event that adjustment happened, it would still require adding another $660 Million into those buckets only to meet the present CHSRA commitment on pre-construction and acquisition activities – not future (g) and (h) needs.[40] More money will surely be required for (g) and (h) activities by the close of FY15.

4. Although not a major financial risk, the §2704.08 (h) bucket governing what can be used for administration and management is also under stress, so it offers neither CHSRA nor FRA a reprieve from the ceiling's limits.[41]

These shortages of planning, acquisition and administrative funds also represent financial risks to FRA. The Authority alleges only FRA money is being spent on construction, and continuing to advance funds for that is a risk that grows daily. Only FRA can answer whether the present Agreement does or doesn't *"appropriately allocate risk between the parties*". But to outsiders it seems that FRA bears vast majority of the financial risks.

2.3 Summary thoughts on FRA's financial risk exposure – FRA is faced with the unpleasant choice of whether it should continue to spend ONLY its funds for a project that likely will be halted either in February or April of 2014 from CHSRA's inability to use Prop1A (c) and (d) money. Even if ARRA funds are shifted to north of Fresno, the legacy of continuing to spend will be seized homes, land and businesses, a partially demolished Fresno, streets and irrigation channels to nowhere, and between $2.2 and $3 Billion of FRA money to blame.

2.3.1 Some harsh realities about FRA's spending – As Appendix A shows, there are no State funds identified to replace Proposition 1A bonds. The FRA stands to not only lose more than $1 Billion on a "stranded asset" financed largely with FRA funds. That $1 Billion may be impossible for the State to reimburse. Additionally, FRA alone will also spend $108 million to connect whatever is built to existing conventional Amtrak rail tracks.[42] Another $400

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[39] This is computed by taking the $343M available on July 1st 2013 remaining in §2704.08 (g) minus $180M in FY14. This leaves a balance of $163M available for FY15.

[40] The $660 Million shortfall is computed by subtracting the remaining, uncommitted funds ($163M) from the $823M commitment to FRA found in Exhibit 3 of the Agreement.

[41] The total available for (h) is $225 Million. By the end of FY13, CHSRA had spent $118 Million, leaving $107 Million available for the present fiscal year (FY14) to match FRA money. However, the Authority has budgeted $126 Million for administrative purposes in FY14, creating a $19 Million shortfall. Where administration monies come from for FY15 (starting in June 2014) is unanswered.

[42] If no Prop1A funds materialize, using only the federal funds allows only about 50 to 70 miles of the ICS track to be built. If the Prop1A funds are used, about 100 of the 130 miles of the ICS' track could be built. All will run parallel to the existing UPRR and BNSF tracks lines. If California cannot use Prop1A money, and if FRA demands part or all of its investment in the project returned, the State must find other revenues to reimburse FRA – not an easy task when public sentiment in California has turned against the project. The December 2012 Agreement (page 81) has provisions for a; " *. . Interim Use Reserve includes a connection on each end of the initial construction section in the Central Valley with the Burlington Northern and Santa Fe Railway Company (BNSF) mainline, plus associated positive train control (PTC), and interim station (i.e., Amtrak) capital costs, totaling $108 million."*

Million has already been granted to, and perhaps already lost by FRA for the construction of the high-speed rail "train box" at the San Francisco Transbay terminal – purportedly justified by a former senior California political figure who publically admits to "bait and switch" strategies in public works construction estimates.[43]

To take the impending lack of funds argument further, consider that the full spectrum of ALL available federal funds will not pay for the grade separated, fully electrified, 220 mph trains as described in every version of the Agreement and promised to Prop1A voters in the 2008 Information Guide.[44] Nor will using ALL available federal ($3.25 Billion) and State "matching" funds ($3.25 Billion max) be enough to build the first 100-mile portion of the legally required 300-mile Initial Operating Segment (IOS).[45]

Further, even if somehow State law were circumvented and all $9 Billion of Prop1A monies were to become available, and the FRA matched that ($9 Billion) the $18 Billion total is still only three-fifths (57%) of their estimated $31.5 Billion to build the Initial Operating Segment (IOS). The odds for these scenarios are very small.

2.3.2 The Authority admits and a Senator details that $6 Billion will only deliver a bit of Amtrak-ready tracks – Even the Authority Board's Chairman conceded that spending $6 Billion in the Central Valley won't attain either what FRA alone is presently funding or voters were promised in 2008 when he said in early 2012; *"We don't get a high-speed rail system but we get a lot."* [46] The former Chairman of the California Senate's Transportation and Housing Committee eloquently seconded that. On July 6th 2012, then-Senator Joe Simitian, speaking on the State Senate Floor, said; *". . when we asked the High Speed Rail Authority were they building what the voters were promised, they told us, well, it's 130 miles of track. And we said: Is it high-speed rail? The answer was no. Is it electrified? No. Does it have positive train control? No. Are you going to run high-speed rail cars on it? No."* The Senator concluded*, "So we're getting an upgraded Amtrak in the Central Valley for $6 billion dollars."* [47] Is this what the FRA set out

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[43] Willie Brown, former CA Assembly Leader and former SF Mayor, wrote in his July 28th 2013 column*; "News that the Transbay Terminal is something like $300 million over budget should not come as a shock to anyone. We always knew the initial estimate was way under the real cost. Just like we never had a real cost for the Central Subway or the Bay Bridge or any other massive construction project. So get off it. In the world of civic projects, the first budget is really just a down payment. If people knew the real cost from the start, nothing would ever be approved. The idea is to get going. Start digging a hole and make it so big, there's no alternative to coming up with the money to fill it in."* See: either http://www.sfgate.com/bayarea/williesworld/article/When-Warriors-travel-to-China-Ed-Lee-will-follow-4691101.php or http://district5diary.blogspot.com/2013/07/willie-brown-dig-hole-and-fill-it-with.html

[44] For a description of what the FRA agreed to fund, see: Attachment 3A of the November 2012 version of the Grant Agreement (PDF pg 80) which says*; "The new high-speed rail system will be grade-separated from road vehicle traffic and will operate almost exclusively on separate, dedicated tracks with a top design speed of up to 250 mph and an operating speed of up to 220 mph."* For what CHSRA plans to ultimately use federal and State funds for, see CHSRA's 2102 Revised Business Plan, and Fact Sheet, found at http://www.cahighspeedrail.ca.gov/assets/0/152/302/e4542793-c05d-4737-a214-e1d1074b37eb.pdf

[45] The IOS is the first 300 mile portion of the 520 mile Los Angeles to San Francisco 2008's voters were promised and the Authority was legally required to prove it had enough funds to complete. Although the Authority certified it had the funds, it didn't.

[46] See comment by CHSRA Chairman Dan Richard, made in a March 15, 2012 hearing on high-speed rail at approximately 3 hours and 30 minutes into the following citation: http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=374

[47] These quotations come from pages 1 and 4 of a verbatim transcript of Senator Joe Simitian's speech at the Senate Floor Session on HSR Trailer Bill 1029, July 6, 2012. For Senator Simitian's arguments for voting "No."

to accomplish?

The reality is that there is no commitment of any more federal, State (other than Prop1A funds), local government or private funds to continue building the ICS or the 300-mile Initial Operating Segment (IOS). This concern was documented by California's Legislative Analyst's Office (LAO) in 2012, the GAO in 2012 and repeated in March 2013, finally reiterated by the judge presiding in the case of Tos, Fukuda, County of Kings vs CHSRA *et al* in August 2013.[48] What is FRA's objective if 'committed' or even theoretical funding falls so far short of building the legally required IOS? Does the reality of the "federal funds first" approach of December 2012 *"appropriately allocate risk between the parties*"?

Unless FRA takes action quickly, $3.25 Billion of federal money could be wasted on about 50 miles of conventional, Amtrak-ready rail track (perhaps only track bed) from Madera towards Bakersfield.[49] Yet CHSRA continues to risk ONLY federal funds. This doesn't seem to be in the interest of the FRA, and is clearly not appropriately allocated *"risk between the parties*" as in the Agreement.

See: http://www.youtube.com/watch?v=NajQSD_Pscs&feature=youtu.be For the complete Floor session's video, see: http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=610. For the language of SB1029, go to: http://leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1029&sess=CUR&house=B&author=committee_on_budget_and_fiscal_review

[48] The LAO expressed its concern in an April 2012 report on the proposed FY13 budget that said; *"Specifically, the funding approach outlined in the 2012 revised business plan is no more certain than what was proposed in previous plans."* See: The 2012-13 Budget: Funding Requests for High-Speed Rail. The GAO expressed its concern about the inadequacy of funding both last December and in its March 2013 study of the CHSRA's project. See: Statement of Susan A. Fleming, Director Physical Infrastructure Issues, Before the Committee on Transportation and Infrastructure, House of Representatives, December 6, 2012; pgs. 5-6 and CALIFORNIA HIGH- SPEED PASSENGER RAIL, Report to Congressional Requesters, United States Government Accountability Office, March 2013. Superior court, County of Sacramento documents on this trial can be found at: https://services.saccourt.com/PublicDMS/Search.aspx – Case # 34-2011-00113919.

[49] It may also only be less than 29 miles of conventional rail track between Madera and Fresno since the Authority has not received environmental clearances for south of Fresno.

3. Compliance In Selecting Construction Contractors

On FRA's Concern About Compliance With California Law Governing the Authority's Contractor Bidding Process – The Amended Cooperative Agreement says; "*CHSRA will engage contractors through the competitive bidding process established by the State of California for all construction activities and in compliance with federal regulations.*" [50] Only FRA knows how close to federal law was the bidding process for Construction Package 1 (CP1). However, since the FRA expressed concern in the Agreement about the possible violations of California law, it is essential to analyze how CP1 was awarded.

Figure 2, and the analysis that follows, shows who and what governs the Authority's actions; then analyzes what steps were taken to undermine the proper governance of the Authority and the selection of the CP1 contractor.

3.1 Governance of the California High-Speed Rail Authority – Both the Public Utilities Commission and the Authority Board's requirements govern CHSRA's bidding process for CP1. What are those rules?

3.1.1 California Public Utilities Commission's rules govern CHSRA's action – The California Public Utilities Code of the Public Utilities Commission (PUC) governs the Authority's charter and actions. CHSRA is not like other State of California agencies: it is a special purpose entity, with broad, unchecked powers. However as a counterbalance to check the actions of management or any single Board member, power is only vested in the Authority's entire Board, requiring a quorum to vote on virtually all matters.[51]

The PUC rules further limit the power of the Chairman (and other officers) compared with other public agencies. The Code delegates the Authority to make changes, whether substantial or insubstantial, <u>solely with the consent of the majority of the Board</u>, not with management, or individual members or officers of the Board.[52]

Nor does the Code allow much latitude to the Executive Director/CEO to take significant action. Under PUC rules, the CEO has extremely limited power, and beyond basic administrative duties can do only what he/she has been delegated or instructed to do. The CEO's job is to *"administer the affairs of the authority as directed by the authority."* [53] The only unilateral powers the CEO has been vested with are to recommend senior staff hires to the Governor, dismiss those hires and hire junior staff employed under Civil Service rules.

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[50] See: Amended Agreement No. 5 Page 94

[51] Division 19.5 of the Public Utilities Code governs the California High-Speed Rail Authority CHSRA. The first two of three chapters of the PUC Code give mission, definitions and the limits of both the Board and the Executive Officer. They are found at: http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=184001-185000&file=185000-185012 and http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=185001-186000&file=185020-185024 respectively. Specifically, Chapter 3 of that Code gives and limits the Authority's powers and defines its purpose. See: http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=185001-186000&file=185030-185038

[52] The Authority Board consists of nine members appointed as provided in Public Utilities Code section 185020.

[53] Specifically, Chapter 3 of that Code gives and limits the Authority's powers and defines its purpose. See: http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=185001-186000&file=185030-185038

As a result, the Board must give detailed orders and delegate very precise tasks to the Authority's CEO and management. Yet, by all appearances, CHSRA's full Board did not know about substantial changes to, nor give its consent on key provisions of the bidding process.

3.1.2 CHSRA Board Resolution HSRA# 12-04 prescribed how the bidding process was to have taken place – At the March 1st 2012 Board of Directors Meeting of the California High-Speed Rail Authority (CHSRA), management presented the process by which the bidding consortia would be judged and selected to build the first section (CP1) of the high-speed rail project.[54]

The one and a quarter hour discussion and vote made the selection criteria and process very clear.[55] They agreed the process was first to evaluate each of the five prequalified consortia on technical merit, with only the three most technically qualified consortia to advance to the second stage: price comparison. This is described in Board resolution HSRA# 12-04, which says:

> *"The Executive Director/Chief Executive Officer is hereby authorized to use a two-step RFP evaluation process that includes a technical evaluation resulting in the qualification of three of the five proposer teams followed by a combined technical/price evaluation of these top three proposer teams."*[56]

State and federal advice, including from FRA, was used to draft that Resolution to meet present transportation procurement procedures using a multi-stage evaluation process.[57] The Board, conforming to California's Public Contract Code and to the limits on Board members' and Authority's actions as specified by their charter under the Public Utilities Code for the type of design-build project that CHSRA proposes, passed Resolution HSRA# 12-04 in March 2012.

CHSRA Attorney Fellenz recognized those limits, sought to be granted, and was granted permission for the CEO to make non-substantive changes.[58] He also knew that the Public Contract Code only gave the Authority's

[54] An 1hour 15 minute video of management's March 2012 presentation is found at http://www.youtube.com/watch?v=-4DppCb9Djk.

[55] The March 2012 bidding criteria and process discussion, based on CHSRA management's recommendations, are shown in the these YouTube videos: http://www.youtube.com/watch?v=ryDKO55v8_Q (5 minutes) and http://www.youtube.com/watch?v=bl_MIrJFIy4 (1 minute)

[56] The link to the resolution on the CHSRA website is: http://www.hsr.ca.gov/docs/brdmeetings/2012/March/brdmtg0312_present3_contractRFP1-2.pdf.

[57] Some of the participants were: the federal Railroad Administration, California Department of Finance, California Attorney General, California Department of Transportation (Caltrans), the California Department of General Services and the California Public Works Board.

[58] In the March 1st 2012 Board meeting, CHSRA Counsel Tom Fellenz addressed why non-substantive issues should be left to the Authority's CEO: *"I haven't discussed before, we also are asking that the High-Speed Rail CEO can make some **non-substantive changes to the term sheet provisions in consultation with the Board Chair**. We wanted to leave in an opportunity to make what, we determine to be a non-substantive changes, so that we don't have to continue to come to the board every time some change is made, because as Mr. Van Winkle indicated, he said, it's a large, voluminous document, and there will be adjustments along the way."* See http://www.youtube.com/watch?v=bl_MIrJFIy4 (1 minute).

management latitude to make non-substantive changes to the process.[59]
Board Resolution HSRA# 12-04; in part reads; [60]

> *"The Executive Director/Chief Executive Officer is hereby authorized and directed to make appropriate **non-substantive changes** to the Construction Package #1 RFP terms contained on the term sheet in consultation with the Board Chair as part of the RFP evaluation and contract negotiation process."*

Therefore, non-substantive changes could only be made with approval of Chairman Dan Richard acting on the will of the full Board.[61] Yet highly substantive changes to the bidding process were made.

3.2 How did a financially weakened, relatively technically deficient firm get selected to build Construction Package 1? – Figure 2 outlines what was supposed to happen in selecting the contractor for CP1, and what apparently happened that violated PUC code and Board guidelines the Authority was supposedly working under. The analysis continues by tracing the steps that indicate which governance rules were ignored or 'amended' so that the Tutor Perini led consortium, California High-Speed Rail Partners, would be selected to build CP1.

3.2.1 The Financial Capabilities Analysis, required by the Authority's rules, supposedly reviewed the then-current financial integrity of pre-qualified bidders – The reasons for and process to certify current financial strengths were addressed in Addendum 9 to the Request for Proposal, Instructions to Bidders.[62] For such a large and complex construction project, or even parts of it, the financial strength of a bidder – demonstrating its ability to attract large amounts of working capital and to withstand unforeseen and negative changes of circumstances – is paramount.

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[59] Specifically, California's Public Contract Code, Section 6805 *says; "The procurement process for the design-build projects shall progress as follows . . Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals."*
[60] See Final Resolution # HSR 12-04, http://www.hsr.ca.gov/docs/brdmeetings/2012/March/brdmtg0312_present3_contractRFP1-2.pdf. The March 2012 vote on the bidding criteria and process was 5-0 with one (Burns) abstention.
[61] Before becoming CHSRA's Chairman, Dan Richard was a paid consultant with Parsons; a member of winning bidding consortia. Chairman Richard recused himself from the March 2012 and May 2013 presentation and discussions on bidding procedures.
[62] See California High-Speed Rail Project, Request for Proposal for Design-Build Services: RFP No.: HSR 11-16: Book 1, Parts A-C: Instructions to Proposers, Certifications, and Forms: Addendum 9, Revision 8, issued 1 January 8th 2013.

Figure 2 – The Steps Of CHSRA's Bidding Process for CP1		
CHSRA's actions are governed by both Division 19.5 of California's Public Utilities Code and CHSRA's Board Resolution HSRA#12-04 of March 1st 2012		
What was supposed to happen		**What actually happened**
Division 19.5 of CA's Public Utilities Code. *Inter alia*, limits CHSRA management's actions to non-substantive changes in the bidding process [63]	Pre-existing	
Firms Pre-Qualified To Bid		**Firms Pre-Qualified To Bid**
Statements of Qualification (SOQ) request	2011	Firms submit Statements of Qualification (SOQ)
Firms' qualifications are evaluated and pre-qualified to bid on CP1	2011-12	Five firms are pre-qualified to bid on CP1
Board Resolution HSRA#12-04 passed requiring a a two-step bidding process [64]	3/1/2012	
Financial Capabilities Analysis		
CHSRA performs a Financial Capabilities Analysis to assure no recent negative Material Changes to bidders' financial condition. A 'Fail' grade in the Financial Capabilities Analysis would eliminate a pre-qualified firm. [65]	2012	
	8/2012	Addendum #4 to RFP issued. Substitutes word "Proposers" for "Technically Competitive Composers" - bypassing Resolution HSRA#12-04's elimination of the two least technically qualified bidders
	1/8/2013	Violating PUC regulations requiring full Board approval, RFP Addendum 9 is issued 10 days before bids submitted, eliminating exclusion of bidders because of negative Material Changes.
Request for Proposals (RFP)		**Request for Proposals (RFP)**
Request for Proposals (RFP) issued	3/2012	Done
CHSRA holds conferences with bidders, answers Requests for Information (RFI) and amends RFP	2012 till 1/8/2013	Three, one-on-one conferences w/each bidder, answered 750 Requests for Information (RFI), nine (9) addenda made to the RFP
Technical Qualifications Analysis		**Technical Qualifications Analysis**
Only financially-sound bidders were to be allowed to submit Technical Qualifications and Cost Proposals		Tutor Perini is allowed to submit its Technical Qualifications and Cost Proposals
Five proposals submitted	1/18/2013	All five Proposals accepted
CHSRA evaluates Technical Qualifications.		Tutor Perini scores lowest of all five bidders with 20.55 of possible 30 points (69%)
Only the three most technically qualified to advance to price competition		Violating CHSRA Board Resolution HSRA #12-04, all 5 bidders, including Tutor Perini, were allowed to advance to price bid phase
Cost Proposal Analysis		**Cost Proposal Analysis**
Price bids of three firms are opened and evaluated.		Of the five price bids opened, Tutor Perini, at $985 million is the lowest cost bidder
Winner announced	6/6/2013	CHSRA awards CP1 contract to Tutor Perini
Contract signed	8/20/2013	

[63] In the March 1st 2012 Board meeting, Counsel Tom Fellenz addressed why non-substantive issues should be left to the Authority's CEO: *"I haven't discussed before, we also are asking that the High-Speed Rail CEO can make some non-substantive changes to the term sheet provisions in consultation with the Board Chair."*

[64] Resolution HSRA#12-04 says, "*The Executive Director/Chief Executive Officer is hereby authorized to use a two-step RFP evaluation process that includes a technical evaluation resulting in the qualification of three of the five proposer teams followed by a combined technical/price evaluation of these top three proposer teams."*

[65] The Financial Capability Analysis says that at the beginning of the bid evaluations, the proposals will face a; *"Pass/Fail" review to ensure that all administrative requirements for the Proposals were met and to ensure that there had been no Material Changes in the financial position of the teams since they submitted their Statements of Qualifications, which would negatively affect their ability to deliver CP 1."* (Emphasis added) See: Agenda Item #2,Briefing: June 6th, 2013 Board Meeting; a Memorandum to Chairman Richard from Frank Vacca. Chief Program Manager and Tom Fellenz, Chief Counsel. Found at http://www.hsr.ca.gov/docs/brdmeetings/2013/060613/AI_2_Proposal_Delegate%20Authority_to_CEO.pdf

In addition to submitting recent financial statements with their bids on January 18th 2013; each potential builder was to have legally certified to no Material Change in their financial situation; and if there had been a change, to have disclosed that change or changes at that time.[66] If there had been deterioration in that strength, a Guarantor was to have certified the consortia's ability to complete the work awarded. <u>No such documentation about legal certifications of no Material Change has been found.</u>

Tutor Perini Corporation (TPC) should have been given a 'Fail' grade in the Authority's 'front-end' test of Material Change to firms' financial status for the following reasons:

1. In taxable year 2012, TPC took a before-tax charge of $377 million.[67] That charge of 5% of its equity value, equated to 25% of shareholder value, a Material Change.

2. In late 2012 TPC had an increasing liquidity problem, as total outstanding contractual obligations had steadily increased over the four years between December 31st 2008 and December 31st 2012. Contracted debt with less than one year of maturity and obligations contracted for between 1-3 years increased nearly four-fold. Obligations to be retired in 3-5 years increased nine fold, while contractual obligations of more than five years increased more than ten-fold in those same four years.[68] That degradation of liquidity, from a four-fold to a ten-fold obligation in four fiscal years, equals a total obligation of $1,083,690 – ten percent more than TPC will be paid for building part of the first miles of the CHSRA's project.

3. TPC's earnings report of August 6th 2012 said, " . . *the Company obtained a waiver of compliance with the covenants of the credit agreement for the period ended June 30, 2012 as the Company would otherwise have been out of compliance with certain ratios due to the impairment charge, current debt levels, and lower than expected income from operations."* This was done, " . . *to allow for more favorable ratios for the Company."* [69] Changing the way accounting rules apply for credit analysis suggests TPC's prior set of accounting rules could be legerdemain – the new accounting method obviously did not show the company in good standing.

4. In September 2012, nearly five months <u>before</u> bids were accepted, Moody's Investors Service downgraded TPC's credit rating because of a serious decline in the firm's liquidity.[70] This downgrade – from Ba2 to Ba3 – of the firm's bonds was from an already high-risk (i.e. junk) status.

[66] Much of the source material for this section relies on the extensive analyses done by Californians Advocating Responsible Rail Design (CARRD). Further financial analyses can be found at the CARRD website at http://www.calhsr.com/about-high-speed-rail/construction-package-1/tutor-perinis-financial-situation/
[67] See: http://www.tutorperini.com/corpindex.html
[68] See: Tutor Perini Corporation, SEC 10K filings for December 31st 2008 and December 31st 2012.
[69] See: Tutor Perini Corporation Announces Q2 2012 Results, found at http://investor.perini.com/phoenix.zhtml?c=106886&p=irol-newsArticle_print&ID=1722836
[70] See: Moody's downgrades Tutor Perini's CRF to Ba3: outlook stable, Global Credit Research – 14 September 2012. Found at: http://www.moodys.com/research/Moodys-downgrades-Tutor-Perinis-CFR-to-Ba3-outlook-stable--PR_255236. "*The rating action reflects Tutor Perini's weaker than expected operating earnings and*

5. While recording accounting profits, Tutor Perini's balance sheet has become highly indebted in the past five years, both as a result of ill-performing acquisitions and negative free cash flow, some of which is attributable to claims disputes.[71] One unresolved dispute, concerning unsound construction of a Las Vegas hotel, goes to Nevada Supreme Court in January 2014; and if awarded, the $500 million litigation will possibly bankrupt TPC. [72]

Each of these findings demonstrated the increasing financial weaknesses of TPC. Each raises the risk that TPC may be financially unable to secure the credit to build CP1. Each should have had a financial Guarantor that would back up TPC's weakness. Each should have raised 'red flags' at the Authority about TPC's Material Change. Together they should have made the Authority aware of the risk that TPC could default on its obligations.

On June 3rd 2013, Authority staff noted that none of the consortia bidding to build CP1 had negative Material Changes to their financial status.[73] No record has been found as to how the Authority arrived at that conclusion, nor whether or how the Authority's Board granted an exemption to TPC or any other bidder because of no adverse Material Change to its financial situation since its 2011 Statement of Qualification (SOQ).[74]
By virtue of Public Utilities Commission (PUC) rules, the Authority's nine member Board needed to approve staff's actions of going forward with a Guarantor. Since the Board and Authority are coterminous under PUC rules, the Board carries responsibility for management's actions.[75] Whether the Board knew about the checkpoints in the bidding process – when management had several chances to eliminate TPC because of a negative Material Change – is therefore immaterial.

Surely, CHSRA management would have – or should have – done Due Diligence on each bidder's financial status prior to the start of the two-step bidding. This

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debt levels, which have resulted in weaker credit metrics. The company significantly increased its leverage in 2011 with the completion of seven acquisitions."

[71] See: Tutor Perini Corporation 10Q filing Q1 2013; Legal Proceedings TUTOR PERINI CORPORATION AND SUBSIDIARIES: NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS at http://biz.yahoo.com/e/130225/tpc10-k.html. Several of these stem from disputes in the transportation projects such as the Los Angeles MTA, Boston's Central Artery Tunnel (aka the 'Big Dig') and the Long Island Expressway.

[72] See: Kelly Goff, "Tutor Perini, MGM Argue in Nevada Supreme Court", San Fernando Valley Business Journal, June 4th 2013; found at http://sfvbj.com/news/2013/jun/04/tutor-perini-mgm-argue-nevada-supreme-court/

[73] In Agenda Item 2 for the June 6th 2013 Board meeting, called Proposal to Delegate Authority to the CEO to Negotiate Final Terms of the DB Contract for CP1 Memo, page 6 says the evaluation team did a *"Pass/Fail" review to ensure that all administrative requirements for the Proposals were met and to ensure that there had been no material changes in the financial position of the teams since they submitted their Statements of Qualifications which would negatively affect their ability to deliver* CP1. . . . The Pass/Fail committee reviewing the financial capabilities of the five proposers found that none had material changes in their financial status which would affect their ability to deliver CP 1." (Emphasis added)

[74] See: the RFP, Amendment 9, Proposers Forms Financial Requirements, Section 9.2.3, pages 47-49 of 62. *This allows the Authority, in this case the full Board, to waiver full compliance with the no adverse Material Condition requirement." If it is determined that the Proposer has incurred a Material Change since the time of SOQ submission, then the Proposer may be given the opportunity to add a Guarantor to its Proposal and must submit all financial information required as part of the RFQ and RFP processes. Such opportunity is given solely at the discretion of the Authority and the additional Guarantor must be deemed acceptable by the Authority."*

[75] See: the RFP, Amendment 9, Proposers Forms Financial Requirements, Section 9.2.3, pages 47-49 of 62. *This allows the Authority, in this case the full Board, to waiver full compliance with the no adverse Material Condition requirement."*

doesn't seem to have happened with TPC's financial status; or if it was done, it was overruled. Nonetheless, each of the following steps should have warned the Board that something was amiss with TPC and perhaps other firms.

1. Between the March 2012 release of the Request for Proposals and bid submissions on January 18th 2013, the CHSRA had three, one-on-one conversations with each of the five proposers, which, " . . *involved each team separately and confidentially bringing their key personnel to the Authority office to meet with senior Authority staff to discuss the technical or procedural elements of the RFP."* [76]

2. The result of these sessions, and answering 750 Requests for Information (RFI*)," . . a total of nine addenda were made to the RFP."* [77] The Authority says that; *"As a result of the sessions, certain modifications were made to the RFP by way of Addenda and taken into consideration by the Proposers in the final Proposals."* [78]

However, Addendum 9 to the Request for Proposals, concerned the evaluation material changes to a bidder's financial situation; effectively eliminating that hurdle. It was released on January 8th 2013, only ten days before the bids were to be submitted.[79] For a due diligence effort that was to have taken place before bids were considered, this seems like an 'eleventh hour' move that violated the Authority's governance.

No record has been found in the December 6th 2012 or January 23rd 2013 or later Board meeting's minutes documenting a discussion or decision by the full Board to exempt bidders from complying with the requirements about Material Changes, or that the Board was cognizant of the change in the review process put in place by Amendment 9, nor whether the Board was aware of what actually took place in evaluating Material Changes prior to reviewing the five consortia's bids.

TPC (and perhaps others) was allowed to enter both its technical and price bid materials for CP1 when Material Changes in its financial condition should have eliminated TPC even before the agreed upon, two-step bidding process began. That can hardly be explained as insignificant or as an administrative oversight.

3.2.2 The Technical Qualifications Analysis ranked and supposedly allowed only the three most technically qualified to proceed to the final, price comparison evaluation – According to CHSRA documents, TPC's Technical Proposal Score was 20.55 out of a possible 30 points (69%), the lowest technical score of the five bidding consortia.[80] The 83% average of the top three bidders (a

[76] See: Agenda Item #2, Briefing: June 6th, 2013 Board Meeting; a Memorandum to Chairman Richard from Frank Vacca. Chief Program Manager and Tom Fellenz, Chief Counsel. Found at http://www.hsr.ca.gov/docs/brdmeetings/2013/060613/AI_2_Proposal_Delegate%20Authority_to_CEO.pdf
[77] Ibid.
[78] Ibid.
[79] See California High-Speed Rail Project, Request for Proposal for Design-Build Services: RFP No.: HSR 11-16: Book 1, Parts A-C: Instructions to Proposers, Certifications, and Forms: Addendum 9, Revision 8, issued 1 January 8th 2013.
[80] See the second page of: http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=2147483802

25 average out of 30 points) should have signaled that vastly more technically qualified competitors were available.[81]

Without commenting on whether the chosen weighting of technical versus price proposals (30% and 70%) for a project type never built in the United States was reasonable; according to the Board's Resolution HSRA# 12-04, Tutor Perini/Zachry/Parsons (TPC) should never have been considered for entry into the final stage (price comparison) and should not have been selected to build CP1.[82]

Simply put, only after all proposers were certified as having no Material Changes to their financial situation, the technical qualification submission envelopes of all five bidders should have been opened in order to be judged solely on their technical merits.[83] In the next step, only the three most-technically qualified bidders' envelopes containing their associated price proposal should have been opened to compare only those technically proficient consortia's price proposals. That didn't happen.

TPC's envelopes should never have been put in the Authority's safe because the company should have failed the Material Changes certifications, and TPC's envelopes containing their contract price bids should have stayed in the Authority's safe because they had the least technical qualifications.[84] Yet they won the CP1 bid.

3.3 Tutor Perini/Zachry/Parsons (TPC) won the CP1 contract by the Authority 'moving the goal posts' – Eleven months after the Board passed HSRA# 12-04, after nine amendments to the RFP, 750 Requests for Information (RFI*)*, and after two extensions of the bidding deadline, on April 12th 2013, CHSRA announced that Tutor Perini/Zachry/Parsons (TPC) was

[81] The highest technical rating went to California Backbone Builders with a score of 27.6; the next highest to Dragados/Samsung/Pulice with 26.13; the third to California High-Speed Ventures with 21.41 and the fourth to California High-Speed Rail Partners with 20.70. The highest score was a third higher than TP's. The second highest was more than a quarter higher than TP's.

[82] However, by the Authority's January 27th 2013 Board meeting, Chairman Richard was both aware of the abrogation of Board's Resolution HSRA# 12-04 and the disproportionate weighting of lower costs over technical qualifications. Chair Richard places it as a question to the Board that day; *"I think when you come back to us, the one thing I would be interested in is to make sure that, as we look at the qualification criteria, that we're learning from whatever we need to learn from Construction Package 1. For example, and, again, I don't necessarily need this to be commentary right now, because I want people to think about it and not say things that can be misinterpreted, but, you know, are we happy with the competitive environment? Do we feel that we need to make changes to relative rankings of technical versus cost or things like that? I would call for some considerable discussion around those issues prior to issuing the first RFP."* See page 90 of the transcript of that meeting: found at http://www.cahighspeedrail.ca.gov/assets/0/152/232/555/4496f957-f26d-4100-9a67-b92693449df6.pdf

[83] The Financial Capability Analysis for CP1 says*, "Upon receipt of the five Proposals, and pursuant to the procedure established in the ITP, Authority staff separated the sealed price proposal envelopes for each of the five teams and placed them in a locked safe located in the Authority's offices. The key to the safe remained under the control of Authority staff at all times. With the sealed price envelopes secure in the Authority's office, Authority staff transported the binders containing the teams' Technical Proposals to the secure location."* See: Agenda Item #2,Briefing: June 6th, 2013 Board Meeting; a Memorandum to Chairman Richard from Frank Vacca. Chief Program Manager and Tom Fellenz, Chief Counsel. Found at http://www.hsr.ca.gov/docs/brdmeetings/2013/060613/AI_2_Proposal_Delegate%20Authority_to_CEO.pdf

[84] TPC leads the California High-Speed Rail Partners consortium. Mr. Morales' employment contract includes ten metrics by which the CEO may qualify for a one-time payment of $25,000. While it isn't clear whether he must complete all ten, or only a portion; it is clear he was unable to complete the "Successful award of design-build contract(s) – at or below estimates by January 2013." See: Change log documentation

the wining consortium.[85] On June 6th 2013, the California High-Speed Rail Authority (CHSRA) awarded the bidding consortia led by Tutor Perini a $985 million design-build contract to construct the first 23-29 miles of its project, CP1, starting in Madera and building southward towards Fresno and Bakersfield.[86] In doing so, CHSRA's management, and possibly one or more members of the CHSRA's Board appear to have violated not only California Public Utilities Code, and CHSRA's Board Resolution HSRA# 12-04, but also their Instructions to Proposers when they selected the Tutor Perini/Zachry/Parsons consortia.[87]

CHSRA's management appears to have made illegal changes to the bidding process without formal sanction of the entire Board of Directors, which since the Board and Authority are considered the same under the PUC rules, makes the Board equally responsible for those illegal changes.[88]

In August 2012, five months after the will of the Board was expressed in Resolution HSRA#12-04, the Authority's Addendum #4 to the Request for Proposals (RFP) changed the bidding rules.[89] The March 2012 Board-sanctioned approach would have advanced only the three bidders with the highest technical scores; that is, only the "Technically Competitive Proposers" would compete in the final stage on the basis of price. But management's August Addendum #4

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[85] View CHSRA's announcement at: http://www.cahighspeedrail.ca.gov/assets/0/134/7fd71c2f-cf92-45b8-aee6-7a4ce052f2c6.pdf Tutor Perini has been repeatedly charged with 'low balling' their bids, finding loopholes in contracts that force change orders and increase the final costs far beyond their bids. These charges were made *inter alia* concerning Los Angeles' subway, SFO airport, a subway station in San Francisco. For details see the following: http://www.sfgate.com/bayarea/article/Low-bid-on-subway-station-could-cost-SF-3780385.php; and http://www.dispatchmarketinginc.com/eNewsletters/ConstructionSafetyDispatchHome/tabid/4859/ID/1558/When-the-US-government-embraces-or-target-gangsters-in-construction.aspx and http://www.sanbrunobart.com/archive/bart/tutor/, and http://www.utsandiego.com/news/2013/apr/15/high-speed-rail-bidder-overruns-tutor/all/?print The Parsons Corporation partner of the winning consortia contributed to the support for 2008's Prop1A. See: https://twitter.com/search?q=%23HSR&src=hash

[86] "Bullet Train Agency Gives $985-Million Contract to Tutor Perini" Los Angeles Times, Ralph Vartabedian, June 7, 2013 CA: as appeared in Mass Transit magazine, June 7th 2013. See: http://www.masstransitmag.com/news/10956798/tutor-perini-to-begin-construction-of-californias-bullet-train-system The contract was signed in August 2013.

[87] The CA High-Speed Rail Authority and its Board, are considered the same entity, as per Chapters 2 & 3 of the Public Utilities Code, Division 19.5, found at: http://www.calhsr.com/about-high-speed-rail/. This special definition is why the Authority's Staff/CEO were not authorized to act on behalf of "the Authority" (the Board) to modify the RFP rules, and also why any single board member was not authorized to act on behalf of the Authority or Board. Unlike other state agencies, Public Utilities Code, Division 19.5 has only three chapters governing the Authority. Chapter 1 at: <http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=184001-185000&file=185000-185012> is a preamble with definitions. Chapter 2 is found at <http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=185001-186000&file=185020-185024> defines the Authority as a Board of nine appointees and establishes the relationship between the Board and its staff. Chapter 3 is found at <http://leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=185001-186000&file=185030-185038> gives and restricts the Authority its powers and defines its purpose (i.e. the 'Shall and May' permissions). As of late 2013, the most recent (February 2013) Policies and Procedures are found at <http://www.calhsr.com/wp-content/uploads/2009/05/Policies-and-Procedures-as-of-Feb-2012.pdf> and the now more-than-a-decade old Conflict of Interest Code is at: <http://www.calhsr.com/wp-content/uploads/2009/05/Conflict-of-Interest-Code.pdf

[88] A review of all Board meeting transcripts and actions for 2012, and the first months of 2013 make no mention of Board actions taken to amend in Resolution HSRA# 12-04.

[89] See the last item for Addendum #4, after Book 4, with the header Addendum No. 4 – Change Log. Found at the download-only link http://cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=13286 or AD.4 RFP HSR 11-16 - CP01 Addendum No. 4 Change Log at http://cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=13286

substituted the term "Proposers" for "Technically Competitive Proposers" – allowing all five consortia to advance to the cost-competitive stage.[90]

After apparently violating the rules about Material Changes to the bidder's financial strengths, Addendum #4 of August 2012 negated the will of the Board, as well as ignored the advice of multiple agencies, and the Authority's governance rules set by California's PUC.

These changes fundamentally altered the bidding process. Resolution HSRA# 12-04 allows for " *. . non-substantive changes to the Construction Package #1 RFP terms contained on the term sheet in consultation with the Board Chair . ."* but the changes as made by CHSRA's management through Addendum # 4 were nothing less than substantive.[91]

The Authority's own Policies and Procedures document says; *"The Board is responsible for developing the policy of the Authority, and for the development and approval of the Authority's key policy documents."* [92] The process and oversight of selecting the consortium to build CP1 is a matter of key policy, and the Board developed the policy for selecting the consortium to build CP1 through its March 2012 deliberations and stated such in Resolution HSRA# 12-04.

However, Chairman Richard apparently assumed he had the power to delegate oversight responsibility of the bidding process to Board member Mike Rossi. He may have done this because he self-exempted himself from the bid evaluation process due to possible conflicts of interest.[93] But Chairman Richard did not have the power to delegate because Resolution HSRA# 12-04 allows delegation of responsibility only for insubstantial changes to the Chairman, and a change of oversight is substantial. [94]

Also, by having Mr. Rossi in charge, Chairman Richard by-passed both Vice Chairs of the Board – a stance that only the entire Board could have approved, but apparently didn't. Furthermore, as described in Article V (3)- Board Committees,

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[90] This was a seemingly innocuous change at the time, but required substantial work to amend different portions of the Authority's RFP's instructions. Other amendments to CP1 include #5 where damages for project delays were lowered to $60,000 per day; and the final acceptance deadline was extended from May 2016 to February 2017. In December's amendment #7, the warranty period on contractor's work is reduced to two years versus prior seven-year warranties. See: Addendum 5 issued and Addendum 7 issued.

[91] The term sheet contains at least one provision that gives the winning consortium an 'escape clause.' The CP 1 Term Sheet specified that the Authority must provide the contractor access to land parcels by the 'access' date specified in the CHSRA's Right-of-Way Acquisition Plan. Around one hundred of these parcels have an access date of between September and December 2013. But as of the close of April 2013, the Authority has not acquired any parcels. There is little or no chance the Authority can deliver access to most of these parcels by the time promised. The Term Sheet goes on to say that if the Authority fails to deliver access by these dates, the contractor is free to add charges delays. This 'opens the door' for potential, if not probable, cost increases: making the low price bid meaningless.

[92] See Article 1, Item C: Board Policies and Procedures, adopted, November 2011

[93] In his May 2nd 2013 comments on management's authority to proceed without Board approval, CEO Morales said; *"Staff did indeed consult with Mr. Rossi acting in that capacity on issues extending the bidding deadlines, you may recall we extended the deadline for submission twice as well as the changes in the evaluation improvements in the evaluation process which had been the subject of a lot of discussion."* This indicates that Board member Mike Rossi had made prior decisions on matters of the bidding process. It is unclear how it came to be that Mr. Rossi held the authority to make decisions concerning the bidding process and deadlines; as his writ is supposedly limited to financial matters. Found at http://youtu.be/DJodNiagrXo

[94] Resolution HSRA# 12-04 is found on the CHSRA website at: http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=12275.

of the CHSRA's Policies and Procedures, Mr. Rossi's authority as head of the Finance Committee does not extend to overseeing the bid evaluation process.[95]

The outcome was that on June 6th 2013, CHSRA awarded TPC a $985 million design-build contract to construct the first 23-29 miles of its project, starting in Madera and building southward towards Fresno and Bakersfield.[96] The consortia groups that lost the bid for CP1 were to have been awarded a stipend up-to-$2 million for bidding.[97] Whether those 'consolation prizes' are financed by federal or State money is not clear.

Despite both PUC and Board rules, at the May 2, 2013 Board meeting, CHSRA's CEO, Jeff Morales, said " *. . the staff had no requirement to obtain board approval for the changes"* made to the bidding procedure and criteria.[98] Where he derived such unilateral power is neither documented nor clear. CEO Morales' response to the April 23rd Los Angeles Times article on the same issue said; *"The decision to open all qualified bids was a thoughtful and transparent step to attempt to create the best outcome for the state."*[99]

Whether the CEO's statement is true or not, CHSRA's changed approach to select the "Apparent Best Value" consortium is irrelevant.[100] Inventing that term *post hoc* to justify actions is not following legal procedures as established by either the PUC or the Board's Resolution HSRA# 12-04.[101]

Summary from analyses of the contractor selection process – By overstepping its legal mandate, the Authority did not *"engage contractors through the competitive bidding process established by the State of California for all*

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[95] See: Board Policies and Procedures, adopted, November 2011.

[96] There have been erroneous reports that Richard Blum, husband of Senator Diane Feinstein (D-CA), was an owner of Tutor Perini. This was true until sometime in 2005-06 when he apparently disposed of his shares in the company. As of May 2013, I can find no evidence of Mr. Blum's holdings in Tutor Perini.

[97] Board Resolution HSRA#-12-04 http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=12275 says; *"The Executive Director/Chief Executive Officer is hereby authorized to include a stipend in the amount of up to $2 million per proposal as part of the procurement for Construction Package #1 subject to the appropriate conditions set forth in terms of the RFP and above."*

[98] A partial transcript of Mr. Morales's comments is found at http://youtu.be/DJodNiagrXo. In it he says; *"Contrary to what has been suggested in various reports, there is no requirement for the Board to approve the specific provisions of this RFP or of any construction RFPs. And many of you sit on other boards, and many people in the audience sit on other boards and I'm not aware of any board that gets into the details of a procurement document. This Board is no different from any others. Staff is given the discretion to develop the procurement documents under broad guidelines and that is what happened here."* A 30-minute YouTube video with the full presentation and discussion of Agenda Item 6 for the May 2, 2013 Board meeting dealing with the bids is found at http://www.youtube.com/watch?v=y7jqK_LU8gQ

[99] The LA Times article can be found at: http://articles.latimes.com/2013/apr/23/opinion/la-le-0423-tuesday-bullet-train-20130423. Letters of comment, including Mr. Morales' can be found at http://www.latimes.com/news/opinion/letters/la-le-0423-tuesday-bullet-train-20130423,0,6974308.story

[100] "Apparent Best Value" is the term used by the Authority's management to describe its process to choose the contractors for CP1. See the press release from the Authority at: http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=2147483802

[101] It would have cost about one half of one year of CHSRA's planning and design charges (about $100 million) or 10% more than TPC's bid, to have the second technically highest ranked and next-to lowest cost consortium, Dragados/Samsung/Pulice (Dragados), build CP1. Their second-all-around consortium's 26.13 out of 30 point technical score was 27% higher than TPC's (26.13 vs. 20.55). With TPC having materially negative changes in their balance sheet, the least experienced in this type of project, and no assurance that TPC will meet their bid price to build the high-speed rail project, the State and federal governments risk at least $100million that may not have happened if Dragados/Samsung/Pulice had been selected.

construction activities". The results will adversely affect the FRA whose funds are at risk for the majority of CP1.

The Public Utilities Code (PUC) §185036 authorizes the California High-Speed Rail Authority to enter into design build contracts with private and public entities. Under that PUC Code, from which the Authority derives its powers, the CHSRA Board must pass such a resolution to have such actions be legal. The Board should have known about the adverse Material Change to TPC's financial condition. The decision to go for 'least cost' instead of greater balance between technical capability and lower costs negated the Public Utilities Code's rules on governance, and violated the Boards' own Resolution HSRA# 12-04.

TPC should never have been allowed to enter even the technical qualifications stage since it had negative Material Changes to its financial condition between 2011 (when it submitted its Statement of Qualifications) and January 2013 (when it submitted its bid). It would have failed the Financial Capabilities Analysis. The Board did not give its permission to ignore whether any bidder had negative Material Changes to their financial conditions after their Statements of Qualifications were submitted.[102]

Another problem with CHSRA's 'moving the goalposts' is that Board Resolution HSRA# 12-04 allows changes to the Request for Proposals (RFP) only for *"terms contained on the term sheet."* The multi-stage procedure, authorized in the final paragraph of the Resolution, but eliminated by CHSRA's management, with at least the tacit approval of one or more Board members, was not part of the RFP's term sheet.

Likewise, Resolution HSRA# 12-24, authorizes the CEO *" . . or his designee for all procurements . . . up to amounts not to exceed $5 million for the purposes of advancing the California High Speed Train Project."* However, the award to TPC for CP1 was nearly 200 times that amount. And there may have been more violations by CHSRA's 'internal' management of awards to move infrastructure.[103] Neither the CEO, nor a Board member can make an award without full approval by a quorum of the Board. [104]

CHSRA's management, and possibly one or more members of the CHSRA's Board violated the rules of review sequence by allowing a financially weakened TPC to bid, by ignoring California Public Utilities Code and CHSRA Board Resolution HSRA# 12-04 when they by-passed those rules to select Tutor Perini/Zachry/Parsons to build CP1. Perhaps FRA will be successful in finding who did what to by-pass the PUC and the Board's rules. For now it remains a mystery.

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[102] See California High-Speed Rail Project, Request for Proposal for Design-Build Services: RFP No.: HSR 11-16: Book 1, Parts A-C: Instructions to Proposers, Certifications, and Forms: Addendum 9, Revision 8, issued 1 January 8th 2013.

[103] A Master Agreement on CHSRA Task Orders for CP1 of September 2012 on the relocation and replacement of roads, irrigation and flood control channels, plus AT&T and PG&E infrastructure equates to over $1.54 billion. The Authority is managing contracts for these works "in house" and it is not clear whether the Board approved such or the process for making these awards.

[104] Resolution #HSR12-24; *CEO Delegation of Authority for Procurement*, was approved on September 11th 2012.

In summary, at least two acts by CHSRA's management, which under PUC rules is legally the same as its Board, violated the principle of a " . . *competitive bidding process established by the State of California for all construction activities . . "*

> In August 2012, Addendum #4 to the RFP negated Board Resolution HSRA# 12-04 of five months earlier <u>that required a technical evaluation to eliminate two of the five firms</u>, and allowed all five to compete on the basis of price.
>
> On January 8th 2013, ten days before proposal packages were submitted, Addendum 9 allowed firms with negative Material Changes to their financial condition to be competitors.

Neither of these Addenda was put before the Authority's Board for a vote. These acts of ignoring the PUC's rules, and violating management and the Board's limited authority to significantly change Resolution HSRA# 12-24 – particularly one developed with the counsel of the FRA and California's Department of Finance – cannot go unaddressed. This is significant to FRA under the "federal funds first" provision of the Agreement. Building CP1 will consume largely federal funds, and much of those funds will be spent on a fraudulently selected contractor, violating FRA's ethics and the terms of the Amended Agreement. FRA funds are at risk.

In sum, there have been flagrant violations of state law, state regulations, and the rules and regulations that the Authority Board itself established to control its activities in connection with the way construction bids were handled. These violations make the Authority's bidding process for CP1 illegal. Those illegalities require that the bid acceptances/contracts be set aside (a subject of pending litigation) and the bidding process restarted. As outlined above, these violations, and the materiality of them, are as follows:

1. Under the Financial Capability Analysis, as required to be followed by the Authority/Board, all pre-qualified firms/bidders financial conditions were to be closely examined. The Authority was required to examine whether there had been any negative Material Change in each firm's financial condition between the time they submitted their Statement of Qualifications and the date set for acceptance of a bid – largely during calendar year 2012. In the event of such a negative Material Change, the contractor had to arrange for a guarantor to ensure that the firm's financial integrity would be guaranteed. <u>This was simply not done, and the Board has never explained this material dereliction of duty</u>.

2. Second, and perhaps most importantly, the Board itself had established clear and unambiguous rules having to do with the "process of elimination" for bidders. All five bidders were to be judged on technical merit [and technical merit only]; with the two that scored the lowest on technical merit eliminated entirely from the bidding process. <u>This elimination process was changed illegally and was not followed.</u> The result: TPC, the least technically qualified firm, which should behave been eliminated, won the bid for CP1 because it came in with the lowest price. Therefore, <u>the statutory rules putting great weight on technical merit were rendered meaningless</u>.

3. The entire bidding process and its results smack of abuse and illegality and must be set aside, as current litigation is demanding.

These are but another set of reasons why the FRA money is at risk, suggesting that the FRA should seriously consider withdrawing from this project or preventing any further use of federal funds until this issue, and the effects of the August 16 ruling are rectified – meaning no more federal money for the Authority until all the laws and regulations, state and federal, are observed.

Appendix A
PAST AND CURRENT SPENDING UNDER PROP1A

The Role of Proposition 1A Bond Funds To Finance the High-Speed Rail Project – In July 2012, when California's Legislature voted to appropriate funds to match FRA grants to initiate construction, the vote was specifically to provide the Authority funds from two sources: 1) the Prop1A Bond Funds and; 2) from the two FRA Grant Agreements via the Federal Trust Fund. This can be seen in a summary of the July 2012 appropriation where over $8 Billion of Prop1A and Federal funds were appropriated, via SB1029, AB1464 and AB1497.[105] No other State funds have been identified or authorized to fund the construction of the system described in AB3034, the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century.

Figure 3, Sections A and B, is a summary of the references in the Agreement and its amendments to the Prop1A General Obligation bond funds. They show that the Grantee (the California High-Speed Rail Authority) anticipates using Prop1A funds. If that is not possible the Grantee is to find a "substitute" source. [106] As far as the FRA should be concerned, finding a "substitute" signals that Prop1A funds are the "preferred" source of funds.

The December 2012 Agreement (Exhibit 3) shows a FRA-imposed tracking structure that specifically allows FRA to monitor whether the State is fulfilling its "matching requirements." This is important when the "federal funds first" mode means the Authority is only going to be spending Prop1A funds to meet its matching percentage requirements sometime after FRA funds are advanced to the CHSRA. Since California's Legislature has not appropriated any other State funds for AB3034, Prop1A bonds funds are the current and only vehicle by which the State can execute its part of the Agreement.[107]

Figure 3, Section C, is a view of how these FRA Agreements have evolved over the past three years, and when they refer to Prop1A bond funds. There are two different FRA Agreements: the first one awarded to the Authority was for use of FRA's ARRA grants; the second for use of FRA's FY10 grants.[108] The first column of Figure 3, Section C, is information about the original, 57-page grant document signed in September 2010. That was the initial $194 Million

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[105] Exhibit J, Explanation of Funds for 2012-2013 HSR Trailer Bill SB 1029 and Budget Bills AB 1464 and AB 1497", by Rita Wespi, CARRD, July 13, 2012

[106] Failing this, the FRA has the right to cancel (per Attachment 2, Section 23 of the Agreement). If a substitute source cannot be found, the FRA has the right to cancel the Agreement, and require the return of some if not all FRA's funds.

[107] As of now, there are no private (domestic or international) funds, no local funds, no other source of federal funds, and no additional, committed and/or authorized source of State funds.

[108] The FRA ARRA Agreement, FR-HSR-0009-10-01-xx is located at
http://www.hsr.ca.gov/About/Funding_Finance/funding_agreements.html
The initial version is identified by the last two digits (xx) of "00" There were no amendments to the FY10 grant for $929 Million (third column from the right in Section C). The five subsequent Amendments are identified as "01" through "05". The second source is the FRA FY10 Agreement, FR-HSR-0118-12-01-xx is located at http://www.hsr.ca.gov/About/Funding_Finance/funding_agreements.html The initial version is identified by the last two digits (xx) of "00". There have been no amendments to this document.

grant for engineering and planning activities; but not construction. There were no references to Prop1A in the initial, September 2010 version of the Agreement.

The next column shows the first Amendment to the original agreement, bringing a cumulative total of $2,466 Million, and constitutes the bulk of FRA grants awarded for construction. In Amendment 01, of December 2010, references to Prop1A appeared throughout the document. These references were carried forward to Amendments 02 and 05.[109]

The column on the far right of Section C shows the latest Amendment, "05", referenced in the Defendant's Brief and the accompanying declaration by Dennis Trujillo 2013 in the case of Tos, Fukuda, County of Kings vs CHSRA et al.[110] Note that the key references on page 3, paragraph "j" of the current (Version 05) Agreement also appeared in the FRA Agreement for the FY10 grants of November 2011. Significantly, that reference to Prop1A used the term "substitute" for the first time.

When Prop1A was passed in 2008, the ballot literature led citizens to believe that the risk to the Californians was limited to the repayment of the Prop1A bonds. Other needed funds would have to come from the Federal government, private investors, and local governments.

In the Tos, Fukuda case, the Defendant's Brief implies that the State is free to fund the high-speed rail system by other bonds or from the General Fund. Such an action probably requires another vote on the high-speed rail system.

[109] Amendments 03 and 04 were administrative revisions to small sections (18 and 4 pages) but carried no references to Prop1A.
[110] Declaration by Dennis Trujillo in Opposition to Plaintiffs/Petitioners' Request For Remedies dated October 10th.

Figure 3
References in FRA Agreement to the Use of The State of California's Sources of Funding

Section A

[This is from the first 94 pages of the December 2102 Agreement, available from Defendants in Tos, Fukuda, County of Kings vs CHSRA as RJN Exhibit 1, dated October 10, 2013.]

Page Number and Location	Quotation of Reference	Evaluation and Significance of the Reference
3, paragraph "j"	In Section: Total Project Cost; Cost-Sharing Responsibility j. FRA recognizes that unless otherwise stated herein, the Grantee anticipates using proceeds of Proposition 1A bonds to provide the Grantee's match funding as required by Subsections 5(c), 5(e), and 5(f) hereof, but that the issuance and sale of Proposition 1A bonds are subject to certain other state legal requirements. In the event the Grantee does not expect such proceeds to be available in time to provide the contributory match concurrent with its request for grant funds, the Grantee shall make all reasonable efforts to secure a substitute funding source to deliver the required funding. Notwithstanding the foregoing, if the Grantee does not meet its obligations to deliver the Grantee contributory match according to the terms of this Agreement, FRA reserves all rights under law and this including those in Attachment 2, Section 23.	Very important. It acknowledges Prop1A funds are the intended source of State funds. If not available, the State must find a **substitute** source. If the State does not perform per the Agreement, the FRA has the right to cancel and "claw-back" FRA funds.
5, paragraph "d"	In Section: Progress Reports: d. An outline of work and activities planned for the next reporting period. Semiannual Proposition 1A bond sale Progress Reports shall be submitted for periods: January 1 –June 30, July 1 –December 31.	Of medium importance. The FRA clearly wants to track the status of the sales of Prop1A bonds, which they view as the primary State source to match the FRA funds. It is unknown if this requirement is being complied with.
6, sub-paragraphs "a" and "b"	In Section: Progress Reports: (continuation of "d" from page 5) Each report shall set forth concise statements concerning activities relevant to the Project, and shall include, but not be limited to, the following: a. The Grantee's actions taken to issue and sell Proposition 1A bonds. b. The amount of Proposition 1A bond proceeds issued, sold and approved for Project use.	Of medium importance. These are the details of what the FRA wants to see about Prop1A bond sales.
43, first paragraph	ATTACHMENT 3, STATEMENT OF WORK, Background: In 2008, the California State Legislature adopted AB 3034, finding "it imperative that the state proceed quickly to construct a…high-speed passenger train system to serve the major metropolitan areas….It is the intent of the Legislature that the entire high-speed train system shall be constructed as quickly as possible…and that it be completed no later than 2020…." Also in 2008, California voters passed Prop1A, approving $9 billion in bonds to support construction of the high-speed train. The	This is background information that in 2008's approval of Prop1A, $9 Billion in bonds for high-speed rail became available.

	Legislature and the voters specifically directed that the system should include California's Central Valley, as well as other major California population centers.	
57, Footnote "5"	In Section: PROGRAM ESTIMATE or BUDGET Table 2: Cost of the Phase 1 PE/NEPA/CEQA Work. (Footnote 5 refers to the various Sections to be built): 5. The total amount budgeted in this Statement of Work for each of these sections includes funds for station area planning as described in Task 3. The non-Federal matching funds (50%) must be provided by local government unless (a) local government can reasonably demonstrate that it cannot provide (or secure from other government or private sources) the matching funds and (b) CHSRA determines that Prop1A funds are legally available to cover the part of the match not provided by a local government.	Of low importance to FRA, but it clearly affirms that if local government funds are not available, then the CHSRA must determine if Prop1A funds are available to cover the local governments' funds. The logical conclusion is that if no Prop1A funds were available, it is the State's problem to resolve, not FRA.
58, second paragraph	In Section: PROGRAM ESTIMATE or BUDGET: The Grantee shall provide FRA with written notice upon the earliest determination that state funds are available, including proceeds from the sale of Proposition 1A bonds, and this Agreement shall be amended to reflect the availability of such funds.	Of medium importance to FRA. Clearly the FRA wants to know, in writing, when any State funds, including Prop1A funds, become available.
78, first paragraph	ATTACHMENT 3A, STATEMENT OF WORK, Introduction: (Repeat of page 43, first paragraph, see above)	Background information. In 2008 voters approved $9Billion of GO bonds for the high-speed rail project.
93, second paragraph	ATTACHMENT 3A, STATEMENT OF WORK, PROJECT BUDGET The Grantee shall provide FRA with written notice upon the earliest determination that state funds are available, including proceeds from the sale of Proposition 1A bonds, and this Agreement shall be amended to reflect the availability of such funds.	Repeats the requirement from page 58, second paragraph (see above)

Figure 3 – Section B
[From Exhibit 3 which follows page 94 of the Agreement]

Page Number and Location	Quotation of Reference	Evaluation and Significance of the Reference
Page 1. Left side of table, half way down the page	Sources: ARRA Funds, FY10 Funds, and Prop1A Funds	Very important. This lists **ONLY** three sources of funds to support this Agreement for $6.1 Billion: two from the US Federal Government, and only Prop1A from the State of California
Page 1. Left side of table, in the "Notes" area	Note 11: "Red Text" designates scope activities that are authorized to be paid with Federal funds, using advance payment method, until Prop1A bond sale or April 2014, whichever is earlier.	Very important. This identifies activities, such as Planning, ROW Acquisition and Program Management, that will be paid via the Advance Payment process, until **specifically** Prop1A GO bond sales, or April 2014 occurs; whichever is earlier.
Page 1. Left side of table, in the "Notes" area	Note 12: "Blue Text" designates scope activities that are authorized to be paid with Federal funds, using advance payment method, until Prop1A bond sale or April 2014, whichever is earlier; however, these activities require FRA approval prior to issuing NTP for any design and construction activities, consistent with Attachment 3A, Task 5 of Cooperative Agreement FR-HSR-0009-10-01-00, as amended.	Very important. This identifies additional activities, such as Contract Work on CP1 (the Tutor Perini contract) and SR-99 (the Caltrans contract) that will be paid via the Advance Payment process, until **specifically** Prop1A GO bond sales, or April 2014 occurs; whichever is earlier.
Page 2. Left side of table, top of page, in the "Calculations" area	Red Text - designates scope activities that are authorized to be paid with Federal funds , using advance payment method, until Prop1A bond sale or April 2014, whichever is earlier.	Repeats Note 11
Page 2. Left side of table, top of page, in the "Calculations" area	Blue Text - designates scope activities that are authorized to be paid with Federal funds , using advance payment method, until Prop1A bond sale or April 2014, whichever is earlier; however, these activities require FRA approval prior to issuing NTP for any design and construction activities, consistent with Attachment 3A, Task 5 of Cooperative Agreement FR-HSR-0009-10-01-00, as amended.	Repeats Note 12
Page 2. Left side of table , bottom part of page, in the "Sources" area	Section identified as; "Prop1A Catch up"	Very important. This table is focused on a monthly basis for reporting, the amount of Prop1A funds needed to catch up to a point where the various "matched contributions" have been, and are being made, with respect to the various ARRA and FY10 FRA grants.

Figure 3 – Section C
References to Prop1A in FRA Agreement and Amended Agreements

Grant Type	**ARRA**	**ARRA**	**ARRA**	**ARRA**	**FY10**	**ARRA**	**ARRA**
Amendment	00	01	02	03	00	04	05
Date MM/YY	9/10	12/10	8/11	9/11	11/11	4/12	12/12
# of Pages	57	62	56	18	50	4	102
FRA Grant Award	**$194M**	**$2,466M**	**$2,552M**	**$2,552M**	**$929M**	**$2,552M**	**$2,552M**
References to Prop1A based on content of this page reference in Amendment 5							
Page 3, j	No	Yes	Yes	No	Yes	No	Yes *
Page 5, d	No	No	No	No	No	No	Yes
Page 6, a & b	No	No	No	No	No	No	Yes
Page 43, 1st paragraph.	No	Yes	Yes	Yes	No	No	Yes
Page 57, FN 5	No	Yes	Yes	No	No	No	Yes
Page 58, 2nd paragraph	No	No	No	No	No	No	Yes
Page 78, 1st paragraph	No	Yes	Yes	No	No	No	Yes
93, 2nd paragraph	No	No	No	No	No	No	Yes
Exhibit 3	No	No	No	No	No	No	Yes

* First time the use of the word "substitute" appears.

Regarding: California High Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section. (STB Finance Docket No. 35724 (Sub-No. 1))

Subject: Opposition and Protest Reply to the California High Speed Rail Authority's Petition for Exemption

Filed By: William H. Warren, Filing ID Number of 235332, March 7, 2014

Attachment 2

Diminishing Prospects For The CHSRA's Initial Construction Section, dated July, 2013 and Addendum, dated February, 2014.

Diminishing Prospects For The CHSRA's Initial Construction Section

(FRA's Central Valley Project)

More Legal And Financial Problems For California's High-Speed Rail Authority

– A Briefing Paper –

Prepared by: William Grindley
William Warren

July 29th 2013

Overview – If they ignore what Prop1A, AB3034, plus their own Business Plans and Agreements with DOT/FRA say, the Authority seems to have funds to build much of the ICS. However, the unique structure of how Federal funds are allocated to specific sections of the ICS causes legal problems with their 2011 Funding Plan. Even if those problems are resolved, they still have a shortfall of at least $600 Million – even with their risky assumptions about soils conditions south of Fresno, and allocating no contingency funds in their latest Agreement with the DOT/FRA. After spending about $7 Billion to duplicate parallel tracks, the ICS could well stop some 40 miles north of Bakersfield. Not a bright prospect for fulfilling 2008's promises to voters.

THE AUTHORS

William C. Grindley – World Bank; Associate Division Director, SRI International; Founder and CEO, Pacific Strategies, ret. (BA Architecture, Clemson; Master of City Planning, MIT)

William H. Warren – Officer, US Navy. Forty years of Silicon Valley finance, sales and consulting experience and management, including CEO of several start-ups, Director/Officer at IBM, ROLM, Centigram, and Memorex (BA Political Science, Stanford; MBA, Stanford)

PUBLICATIONS

All available at www.sites.google.com/site/hsrcaliffr and at
www.cc-hsr.org, then go to Financial Reports

Major Reports on High Speed Rail by the Authors:
– The Financial Risks of California's Proposed High Speed Rail Project (Oct 2010)
– A Financial Analysis Of The Proposed California High-Speed Rail Project (Jun 2011)
– Revisiting Issues In the October 2010 Financial Risks Report (Sep 2011)
– Twelve Misleading Statements on Finance and Economic Issues in the CHSRA's 2012 Draft Business Plan (January 2012)
– California High-Speed Rail Authority's 2012 Draft Business Plan – Assessment: Still Not Investment Grade (January 2012)
– A Partial Catalog of Inappropriate, If Not Illegal Actions in the Conduct and Execution of California's Proposed High-Speed Rail Project – Volume I, March 2012.
– The CHSRA Knows Their Proposed High-Speed Train Will Forever Need An Operating Subsidy (March 2012)
– A Partial Catalog of Inappropriate, If Not Illegal Actions in the Conduct and Execution of California's Proposed High-Speed Rail Project – Volume II, November 2012.
– To Repeat: The CHSRA Knows Their Proposed High-Speed Train Will Forever Need An Operating Subsidy (December 2012)

Briefing Papers:
– Dubious Ridership Forecasts (Oct 2010)
– Six Myths Surrounding California's High-Speed Rail Project (Jan 2011)
– Seven Deadly Facts For California's High-Speed Rail Authority (Jan 2011)
– A Train To Nowhere But Bankruptcy (Feb 2011)
– Big Trouble For California's $66 Billion Train (Mar 2011)
– Will The Train Benefit California's Middle Class? (Apr 2011)

Brief Notes: Twenty-three one page, single subject papers on various aspects of financial issues related to the proposed high-speed rail system, Oct 2010 - Aug 2011

Any fault found in this report is solely the responsibility of the Authors.

– Part One –
More Potential Legal Problems For The Authority Emerging From Adopting Its Financial Plan

When the Authority adopted its Financial Plan in November 2011, it did not have all of the funds to build the Initial Construction Section as required by AB3034; but they certified they did.

When Authority starts building, it will have a legal shortfall of funds for the Initial Construction Section (ICS) due to the terms of their Agreement with the DOT/FRA – The December 2010 and Amended 2012 DOT/FRA-CHSRA Agreement specifies where both the Federal Fiscal Year 2010 Appropriation funds and the American Recovery and Reinvestment Act (ARRA) funds could only be used. These Agreements differ on the amounts available for the Madera to Fresno section because additional FY10 awards were made during the interval.

The two specific sections were the Madera to Fresno (CP1A and CP1B) section, where only FY10 grant Appropriations could be spent; and the Fresno to Bakersfield (CP1C, CP2, CP3, and CP4) section, where both FY10 funds and ARRA grants could be spent. Appendix D and E are maps of the ICS that show the first four Construction Projects (CP1 through CP4).[1] Both sections comprise what the Agreements refer to as the Central Valley Project, but known in the Authority's plans as the Initial Construction Section (ICS).[2] The 2010 Agreement obligated $715 Million to the Authority to be spent on the Madera County and Fresno section.[3] While the 2012 Amended Agreement still obligated FY10 grant Appropriations to the Madera County and Fresno section, it raised the commitment to $929 ($928.62) Million.[4]

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[1] Appendix E is a detailed map of Construction Project 1 (CP1) divided into three parts – CP1A, CP1B, and CP1C. Key to understanding why the divisions is that the northern 24 miles (CP1A and CP1B) are the only parts of the ICS supported by the Merced to Fresno EIR. The Surface Transportation Board's (STB) approval was only for CP1A and CP1B's distances. The remainder of the ICS (CP1C, CP2, CP3, and CP4) is in the Fresno and Bakersfield section, supported by the forthcoming Fresno to Bakersfield EIR.

[2] The 2010 Agreement, page 47 [PDF 48], and the 2012 Amended Agreement, pg. 80 [DPF 82], address this same issue of place, although the 2012 document increased the amount of unspecified loans from $715 million to $928.62 million <u>only</u> for the Madera to Fresno section. The separation of the funds between Appropriations designated only for the Madera-Fresno section and ARRA grants designated only for Fresno to Bakersfield is explained as follows; *"Because the Project is more expensive than any single funding source available, the Project scope is separated into two geographic sections that are integral and interdependent.* In combination with each other, they will comprise and describe the entire initial Central Valley Project. *This Agreement covers final design and construction activities between Fresno and Bakersfield (Kern County), funded with $2.321 billion in 2009 ARRA funds that are being awarded through this Agreement. Final design and construction activities between Madera County and Fresno will require up to $928.62 million in Federal funding and are anticipated to be addressed in a future FRA obligation of HSIPR funding."*

[3] *"Final design and construction activities between Madera County and Fresno <u>will require up to $715 million</u> in Federal funding and are anticipated to be addressed in a future FRA obligation of HSIPR funding."* (Emphasis added)

[4] Op Cit. See: December 2012 Amended Agreement, pg. 80 [PDF 82]. *"Final design and construction activities between Madera County and Fresno <u>will require up to $928.62 million</u> in Federal funding and are anticipated to be addressed in a future FRA obligation of HSIPR funding."* (Emphasis added). The portion of the statement that monies had not been obligated for the Madera to Fresno section in the 2012 Amended Agreement seems to be a clerical error, since in other parts of the 2012 Amended Agreement

Both of these Agreements state that the ARRA funds are only to be used on the section between Fresno and Bakersfield. Blending the ARRA and FY10 funds for design and build activities, other than for what is specified, probably violates the Agreement governing the use of Federal funds for the Central Valley Project.[5].

The Authority adopted a Financial Plan without the funds to build the ICS – On November 18, 2011 the DOT/FRA signed the FY10 Agreement with the Authority obligating the entire $929 Million of FY10 funds. [6] The Agreement stated that these FY10 funds could be used anywhere between Merced and Bakersfield. But the Authority had already adopted its Funding Plan on November 3rd 2011, two weeks before the Federal funds were obligated.

In that Financing Plan the State committed $360 Million to 'match' the FY10 Appropriations for the Madera to Fresno section. As of that date the Federal portion of FY10 monies, i.e. the entire $929 Million ($928.62), was not yet obligated. But it was assumed to be obligated in the Authority's Financing Plan.[7] Only two weeks after the Board approved the Financial Plan, on November 18th 2011, did the DOT/FRA formally obligate the $715 Million and the $213.62 Million of 'returned' FY10 Appropriations (not ARRA grants) for the Central Valley Project. Only then was the total of FY10 funds of $928.62 Million obligated.[8] Two weeks before this Federal FY10 obligation, the Authority adopted its Financial Plan, probably illegally since it could not certify on November 3rd it had an *"expected commitment . . ."* of federal funds other than the awarded, but not yet obligated $715 Million and $213 Million for the Merced to Fresno section.[9]

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the $213.62 Million difference is described. The FY10 Grant Agreement (as opposed to the ARRA Grant Agreement) is also consistent with the total FY10 awards being $929M.

[5] FRA awarded the $715 Million FY10 grant during October 2010 and the FRA awarded its $214 Million FY10 grant during May 2011.

[6] FY 2010 ended September 30th 2010. Federal monies after that date where given in subsequent fiscal years. See the FRA web site on Obligated High Speed Intercity Passenger Rail Funding By Region, at http://www.fra.dot.gov/Page/P0554.

[7] See Exhibit D-1, page 8 [PDF 13] of California High-Speed Rail Funding Plan, November 3 2011.

[8] The November 18th 2011 version of the FY10 DOT/FRA-CHSRA Agreement (FR-HSR-0118-12-01-00) [PDF pg 33] says; *"As part of this announcement, the Authority was selected to receive an additional $86,380,000 in ARRA funding and $213,620,000 in FY Appropriations for final design and construction of the initial Central Valley section. This Cooperative Agreement (Agreement) obligates the FY10 funding from both the October 2010 and May 2011 selections totaling $928,620,000 which will be matched in part with state funds."* That $300,000,000 explains the $300 Million citation in the FRA's website.

[9] AB3034, Section 2704.08 (c) (2) says, *The plan shall include, identify, or certify to **all** of the following: . . (D) The sources of all funds to be invested in the corridor, or usable segment thereof, and the anticipated time of receipt of those funds based on expected commitments, authorizations, agreements, allocations, or other means.* The CHSRA may argue that the $715 Million and the $214 Million increase of funds were expected.. Since the $715 Million and the $213.62 Million are both from FY10 Appropriations, and add up to the $928.62 Million, these monies are the only funding available for the design and building of the Madera to Fresno section. See the FRA web site on Obligated High Speed Intercity Passenger Rail Funding By Region, at http://www.fra.dot.gov/Page/P0554.

The constraint of only using FY10 funds for CP1 causes the Authority another legal problem – Figure 1 is from the Authority and DOT/FRA's records and from a Californians Advocating Responsible Rail Design (CARRD) independent analysis. Figure 1 shows the estimated costs of Amtrak-Ready track for first 29 miles of the Central Valley Project – CP1 from Madera to the south side of Fresno.[10] It shows expenses that are managed by CHSRA, while others are managed by Caltrans, local governments, or special purpose and private agencies, plus the award to the TPC-led consortium. It does not include the expenses to make the Central Valley Project HSR-Ready, only Amtrak-Ready.

Costs and shortfalls for the northern portions of CP1 (CP1A, CP1B) – Figure 1 shows two cost estimates for acquiring land, moving or building infrastructure and building an Amtrak-Ready rail bed.

DOT/FRA-CHSRA's estimates – According to the December 2012 DOT/FRA-CHSRA Grant Agreement, the estimated costs to acquire land, move or remodel/rebuild infrastructure and prepare a track bed with Amtrak-Ready tracks is $2,412 Million. Appendix C shows that $1,997 Million of these costs are contained in the portion of CP1 that is north of Fresno. This section of track can only receive FY10 funds. ARRA grants are solely for work south of central Fresno.[11]

The Agreement shows that the Authority's $929 Million of FY10 funds are about half of the real costs to build CP1A and CP1B. Counting the Authority's Prop1A matching funds ($360M), the total available funds are $1,289 Million, about two-thirds (65%) of the real costs for an Amtrak-Ready CP1A and CP1B (Madera to Fresno). As Appendix C shows, that's a funding 'shortfall' of at least $708 Million for CP1A and CP1B.

CARRD's Estimates – Additionally, Column B of Figure 1 shows Californians Advocating Responsible Rail Design's (CARRD) findings on CP1. These are based on data from Public Works Agreements the Authority has with governments and utilities, plus the TPC-led consortium's contract. CARRD's total estimated cost to build to Amtrak-Ready specifications for the entire Madera to Fresno CP1 section is $2,684 Million.[12]

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[10] Amtrak-Ready means the infrastructure is available to run conventional, diesel-powered passenger (or freight) locomotives and carriages on the infrastructure. It specifically excludes any investment in electrical power distribution equipment, HSR rolling stock, HSR signaling, or train control. While it does include the rails and rail bed infrastructure to accommodate 220 mph HSR trains, there is no assurance this also is underestimated since no one has built HSR-Ready track in the USA before. However, CARRD's $300 Million seems to be more reasonable than the $115 Million allocated in the DOT/FRA budget for HSR-Ready track. Prop 1A requires all expenditures to be for two parallel HSR tracks, not for conventional rail tracks. Therefore building just conventional rail, with the intent to replace it later with HSR rail would most probably be an illegal expenditure.

[11] The 'Fresno dividing line' between sections CP1B and CP1C appears to be at the Fresno HSR Station

[12] This is also reflected in Appendix B, row 16.

Figure 1 **Costs To Acquire & Build Madera-Fresno Section CP1** **To Amtrak-Ready Specifications ($Millions)**		
	-A- [13] DOT/FRA-CHSRA Grant Agreement-Dec 2012	**-B-** CARRD Projection 2013 [14]
Land Acquisition	$441	$575
Construction, includes TPC contract	$1,451	$1,308
CP5 -Track	$114	$300
Planning, Engineering	$180	$209
Reserves	$0	$66
Other - Caltrans-Hwy 99	$226	$226
TOTAL CP1 COSTS	**$2,412**	**$2,684**
Est. 'shortfall' to complete CP1	**$708**	**$932**
Costs/mile @ 29 miles	**$83**	**$93**

Using the CARRD analysis, the Authority's 'certified as being in hand' FY10 and matching $360 Million Prop1A funds, totaling $1,289 Million, are a little more than half (58%) the real costs to build CP1A and CP1B, estimated to be about $2,221 Million. This is detailed in Appendix C. CARRD's analysis shows there is a CP1A and CP1B funding shortfall of at least $932 Million.

Legal issues derived from a funding shortfall – From that range of shortfalls emerges a potential legal problem to fund CP1A and CP1B. In simple terms – to build to Amtrak-Ready specifications from Madera to Fresno, and stay within the Agreement's legal boundaries, the Authority must find more money. Specifically the Authority needs another $708 Million to $932 Million of combined State Prop1A bond funds and Federal non-ARRA funds, whether grants or loans. [15]

If the Legislature were to empower the Authority to amplify the State's Prop1A commitment to the Madera to Fresno section from 28% ($360 Million) to 50% (as shown in Appendix C), the Authority would then have matched the Federal Appropriations with $928.62 Million with Prop1A funds. Federal FY10 and Prop1A matching monies would then put $1.86 Billion ($1,857,240,000) at the Authority's disposal to construct to the CP1A and the CP1B Madera to Fresno section.

But if given that 50:50 matching power, the Authority gains another potential legal problem. On November 3rd 2011 the Authority certified it had <u>all</u> the funds to build CP1 by only matching the Federal FY10 Appropriation of

[13] CP5 track costs were allocated on a per mile basis relative to the CP1 miles and the ICS' 130 miles. The Planning, Engineering, and Reserves were allocated as a percentage of direct costs (Land, Construction, CP5 Track) and the Caltrans [Hwy 99]) costs relative to total ICS direct costs. Also see Appendix C .

[14] A detailed Figure 1-Column B, the CARRD estimate is also at the end of this report, as Appendix A. The 2013 CARRD estimate relies on actual Master Agreements with government and private entities as opposed to the DOT/FRA-CHSRA 2012 Agreement, which, it is probably no coincidence coincides with the all funds available for the ICS.

[15] Unfortunately for the Authority, all ARRA funds for have been committed to other states.

$928.62 Million with $360 Million of State matching funds ($1.289 Billion total). [16] As Appendix C shows, even if the Authority were to legally gain the power for a 50:50 match, their $1.86 Billion would only be about 83% to 93% of what they need to build CP1A and CP1B from Madera to Fresno. As Appendix C also shows, they still fall short of non-ARRA funds to build from Madera to Fresno – between $140 Million and $365 Million.

Congress is unlikely to award appropriations monies for California's HSR project, and the Agreements are clear that only the $928.62 Million of FY10 federal Appropriations (not ARRA grants) can be used on the Madera to Fresno section.[17] 'Dipping into' ARRA grants to cover half the $140 Million to $930 Million shortfall could 'trigger' a legal problem, particularly if the Authority knew on November 3rd 2011 that they didn't have all the funding to build CP1.[18] Since ARRA funds in the Agreement are only for Fresno to Bakersfield (CP1C and CP2, CP3, and CP4), attempting to fund CP1A and CP1B with these ARRA funds is most probably illegal.

But the Authority's only practical remedy is to use the ARRA obligated grants and matching Prop1A bonds for the Madera to Fresno section. The DOT/FRA has previously shown itself very pliable to amending its contractual and financial terms to help the Authority, particularly by abrogating its 2011 policy directive that altered the timing of spending Federal grant dollars from each dollar being a 1:1 match to being those 'first spent.' [19]

To amend the Agreement again would be another admission of the DOT/FRA and Authority's failure to understand the real costs of building a HSR system – or more cynically, part of their overall 'cost creep strategy.' But even a 'Twice Amended Agreement' does not resolve the probably illegal action taken to approve the November 2011 Funding Plan.

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[16] The Authority already matched the FY10 $929 Million with $360 Million of Prop1A funds. See Exhibit D-1, 'Initial Construction Section Funding Sources' page 8 [PDF 13] of California High-Speed Rail Funding Plan, November 3rd 2011. The 2012 Cooperative Agreement, PDF page 97, shows the $982.62 Million of FY10 monies that are designated only for the Madera to Fresno section. The 2012 DOT/FRA-CHSRA Agreement also shows (in blue typeface) the $1.45 Billion for government and private entities to move, restore/ rebuild infrastructure that includes the TPC-led consortium contract, and another $225.9 Million for Caltrans to relocate Highway 99. These items are not 'broken out' in the Funding Plan although they are specifically and only for CP1 between Madera and Fresno.

[17] Congress eliminated HSR funds for California in Fiscal Years 2011, 2012 and 2013. The likelihood of Appropriations for FY14 is also very small.

[18] The Authority could have known when they approved the Funding Plan in November 2011 that they did not have sufficient, legally available, FY10 funds, to build from Madera to Fresno. This is because four months later, in March 2012 they submitted the Public Works documents which are the foundation of CARRD's $2.684 Billion estimate for that section.

[19] The May 25th 2011 ruling requiring a 1:1 match of Federal and State monies for the HSR project was made by then-Undersecretary Roy Kienitz in a letter to then-CEO Roelof van Ark. John D. Porcari, Deputy Secretary of the Department of Transportation, reinforced tis position in January 3rd 2012 a letter. The pliant behavior of the FRA is also exemplified by agreeing that the theretofore-assumed start date of September 2012 could slip to mid-2013, which was forced upon the FRA as the original date passed. For the section in the Amended Agreement where the FRA lets federal dollars be spent first: see: AGREEMENT NUMBER: FR-HSR-0037-11-01-00, Attachment 1, page 93, which says, *"The Parties acknowledge their mutual benefit in efficiently spending the Federal and state funds to complete the Project and that there is an opportunity for substantial cost saving in Task 8 if the Grantee is allowed to accelerate the expenditure of ARRA funds."* No attempt to document *"substantial cost saving"* was found in the Amended Agreement.

Building a conventional rail bed and installing conventional rail for CP1-CP4, only to later upgrade to HSR-Ready track is not only expensive, but also violates both AB3034 and the DOT/FRA Agreements – AB3034 calls for the construction of high-speed rail tracks.[20] If the ICS track bed is built to high-speed rail specifications, Amtrak's conventional diesel locomotives trains will be unable to use it without considerable extra costs such as Germany incurred when building its Inter City Express (ICE).[21] This is because a conventional diesel, such as freight and Amtrak use for locomotion, has a 30-ton per axle loading; nearly twice that of the 17-ton per axle maximum load on most high-speed railways.[22] Simply put, a conventional locomotive would crush a ". . *HST guideway*." [23]

The DOT/FRA tacitly approved the Authority using Federal funds to build the ICS to conventional rail specifications since they funded an 'Interim Use Reserve' to connect whatever gets built to the existing BNSF rails, presently used by the San Joaquin Amtrak line.[24] This is evidence of the parties' intent, but it is a 'disconnect' with their Agreement and AB3034's intent.

There also seems to be an internal contradiction to the DOT/FRA-CHSRA Agreement's assumptions about what gets built. On the one hand the Agreement requires *". . construction of fully grade-separated mostly dedicated HST guideway . ."* [25] Conversely, the Agreement helps keep today's costs low because it doesn't demand complete HSR-Ready infrastructure.[26] If the Authority first builds a 'cheaper per mile' conventional rail bed in the ICS, then Amtrak can use it. But what gets built won't meet

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[20] AB3034, Article 1. General Provisions 2704.01 states: *"As used in this chapter, the following terms have the following meanings:(e**) "High-speed train system" means a system with high-speed trains and includes**, but is not limited to, the following components: right-of-way**, track**, power system, rolling stock, stations, and associated facilities."* Likewise, on page 8 of AB 3034 says: *"(B) if so completed, the **corridor or usable segment thereof would be suitable and ready for high-speed train operation**, (C) upon completion, one or more passenger service providers can begin using the tracks or stations for passenger train service . .* "

[21] For an example of how much it would cost to build to high-speed rail specifications that would allow both conventional and HSR trains to use it consider the following. The cost per mile of an Inter City Express (ICE) line in Germany is two to three times that of the Tren de Grande Vitesse (TGV) lines of France. The most important reason for this difference is that the ICE system uses slab tracks that allow both high-speed rail and conventional passenger and freight use. TGV tracks are ballasted and used only for TGV passenger use, with the weight limited to 17 tons per axle.

[22] See: Declaration of Richard F. Tolmach in the case of Tos, Fukuda and Kings County vs CHSRA et al. paragraph 13, page 5. No CHSRA cost estimate includes rolling stock, so no high-speed trains will roll operate on the 130 miles between Madera and Bakersfield ICS.

[23] See the 2010 Agreement, pg. 47 [PDF 48] and the 2012 Agreement, pg. 81 [PDF 83].

[24] The 2010 Agreement, pg. 47 [PDF 48] and the 2012 Amended Agreement, pg. 81 [PDF 83] are in sync on this point. Both say, *"The Interim Use Reserve includes a connection on each end of the initial construction section in the Central Valley with the Burlington Northern and Santa Fe Railway Company (BNSF) mainline, plus associated positive train control (PTC), and interim station (i.e., Amtrak) capital costs, totaling $108 million. The funds allocated to this Interim Use Reserve are 100% Federal funds."*

[25] See the 2010 Agreement, pg. 47 [PDF 48] and the 2012 Agreement, pg. 81 [PDF 83].

[26] The Agreement doesn't fund elements of an HSR system yet demands that track be built for HSR, which according to experts makes it useless for operating conventional diesel. *"HST systems elements are not included in this Project (e.g., electrification, communications systems, train control, rolling stock, and vehicle maintenance facilities); these elements will be added by CHSRA as additional funding permits and are required to complete an initial operating segment."* See 2012 Agreement, page 82 [PDF 84].

the terms of the DOT/FRA-CHSRA Agreement or Prop 1A and AB 3034. Herein lies a legal problem for the Authority.

If the Authority follows AB3034 and their Agreement with DOT/FRA, and builds the ICS to HSR-Ready specifications much of that will have been 'bad money thrown after bad money', since it will lack all the components needed to make the ICS truly HSR-Ready, and it will unusable by Amtrak without incurring great damages from far heavier, conventional diesels.

– Part Two –
The Authority Still Has A Serious Shortfall Of Funds To Be Amtrak-Ready in the Central Valley Project (ICS)

Despite its efforts to stretch its dollars by not complying with what it said it was going to do, reality will strike when the Authority begins constructing the 130 miles of the Initial Construction Section – aka the Central Valley Project.

The Authority lowered its capital requirements by 'fudging' on the ICS' costs – Building to high-speed rail (HSR) specifications costs more than building to conventional diesel, Amtrak-Ready specifications. HSR-Ready infrastructure requires more accurately aligned tracks, an electrical power grid, plus safety and signaling systems responsive to 220mph HSR operations. Both the 2010 and 2012 versions of the DOT/FRA-CHSRA Agreement require *". . construction of fully grade-separated mostly dedicated HST guideway . ."* [27] But the current FRA funding Agreements omit requiring vital infrastructure elements needed for high-speed operations; therefore what will be built will not be HSR-Ready. [28] The most obvious example is electrification, which will not be added until the IOS is constructed. Until at least $20 Billion more is found to complete the IOS, whatever portion of the ICS gets built will only be Amtrak-Ready.[29]

Because neither party wanted a 'stranded asset' the Agreement specifies that the DOT/FRA itself will provide $108 million to connect to the existing San Joaquin Line's tracks.[30] The DOT/FRA-CHSRA Agreement awarded

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[27] See the 2010 Agreement, pg. 47 [PDF 48] " . . *the Project includes ROW acquisition and site work, final design, and construction of **fully grade-separated mostly dedicated HST guideway**, including aerial structures (viaducts) and track work."* The 2012 Agreement, pg. 81 [PDF 83] says; "*. . . , the Project includes ROW acquisition and site work, final design, and **construction of fully grade-separated mostly dedicated HST guideway**, including aerial structures (viaducts) and track work.*"

[28] The Agreement doesn't fund elements of an HSR system, yet demands track be built for HSR, which because of greater per axle weight of conventional diesel, makes it impossible to operate conventional diesel on. See 2012 Agreement, page 82 [PDF 84] *"HST systems elements are not included in this Project (e.g., electrification, communications systems, train control, rolling stock, and vehicle maintenance facilities); these elements will be added by CHSRA as additional funding permits and are required to complete an initial operating segment."*.

[29] The Authority has secured about $6 Billion in Federal grants ($3 Billion) and State Prop 1A GO bond ($3 Billion) financing for the ICS. After committing $1Billion of the remaining $6 Billion of Prop 1A bonds to the "Bookends" there is $5 Billion of Prop 1A funds available to build of the remaining part of the IOS, if at least $5 Billion of Federal or private financing can be secured. According to Exhibit ES-3 [PDF pg. 21] of the April 2012 Business Plan, the Initial Operating Segment (mistakenly called Section there) YOE Cost is $31 Billion, including the $6 Billion being spent on the ICS. Therefore there is a $25 Billion funding requirement needed to complete the IOS. Even using the remaining $5 Billion of Prop 1A bonds will require finding $20 Billion more of Federal or private financing. That is two and a half times the total nationwide ARRA HSR program.

[30] See the 2010 Agreement, pg. 47 [PDF 48] and the 2012 Amended Agreement, pg. 81 [PDF 83] *"The Interim Use Reserve includes a connection on each end of the initial construction section in the Central Valley with the Burlington Northern and Santa Fe Railway Company (BNSF) mainline, plus associated positive train control (PTC), and interim station (i.e., Amtrak) capital costs, totaling $108 million. The funds allocated to this Interim Use Reserve are to be 100% Federal funds."*. Both the 2010 and 2012 Agreements call for a $108 Million Interim Use Reserve. It seems unlikely that $216 Million is needed for two spur tracks to connect to BNSF' line, so Appendices B and C assume a single $108 Million.

Appropriations and grants for "*mostly dedicated"* HSR specification, yet the Authority is building to Amtrak-Ready specifications, with at least DOT/FRA's tacit approval. If the savings by building Amtrak-Ready versus HSR-Ready track is as shown in Appendix B, the savings would be about $800 Million.

Second, the March 2012 Public Works Budget's land acquisition costs for the 29 miles of Construction Project 1 (CP1) was $658 Million, but CARRD reduced it to $575 Million to eliminate double counting of part of the SR-99 re-alignment. See Appendices D and E for maps of the ICS and CP1. The CARRD projection is 30% higher that the December 2012 FRA-CHSRA Grant Agreement. If this rate of increase is applied to all of the ICS land costs, these extra costs will increase the ICS' costs by $225 Million.

Third, the CHSRA's Master Agreements on the relocation/reconstruction of infrastructure for CP1 is $1,545.9 Million.[31] The total of these non-rail infrastructure change items is $95 Million more than the $1,451 Million of the DOT/FRA-CHSRA Agreement – about $3.3 Million more per mile.[32] Over the ICS' length the additional costs would be about $482 Million more than their present estimates.[33]

There are also two problems south of Fresno that will cost more and give the Authority more headaches than buying and building on farmland.

About 20-28 miles north of Bakersfield, between Shafter and Wasco, are more than sixty active oil wells.[34] This area is also the route of Construction Package 4 (CP4). Although horizontal drilling can mitigate some of the techno-economic issues with the Authority's assurance to owners to relocate their well heads and compensate for losses, it is not clear how the owners will react to even temporary shutdowns of production. This is another costly risk that will stretch the Authority's $6 Billion capability to build the ICS.

The second impairment to the Authority's fixed capital budget is the widespread, annual, and unequal rises and falls of land levels between Tulare and Bakersfield – aka CP3 and CP4.[35] For more than 50 years, geologists, irrigation channel engineers and farmers have known that the *"land surface has subsided more than 20 ft."* as the result of drawing down the water table for agriculture.[36] When winter rains and imported water fill aquifers, land

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[31] See: Plaintiff's Brief in the case of Madera County versus the California High-Speed Rail Authority.
[32] See the 2012 Agreement, pg. 97 [PDF 97]
[33] Such an occurrence would offset the potential savings shown on Appendix B of about $400 Million in the column for "Construction", which is due to the lower than projected bid price from TPC-led Consortium for construction of CP1.
[34] Most wells are south of the Paso Robles Highway (Rt. 46), and west of the Golden State Hwy (Rt. 99)
[35] See: Ben E. Lofgren, USGS, Sacramento, CA; Field Measurement of Aquifer-System Compaction, San Joaquin Valley, California, USA, Figure 2, pg 274; Map showing the magnitude and areal extent of subsidence in southern San Joaquin Valley.
[36] Nikola P. Prokopovich and David C. Magleby; Land Subsidence in Pleasant Valley Area, Fresno County, California; *Journal (American Water Works Association)*, Vol. 60, No. 4 (APRIL 1968), pp. 413-424. Authors Devil Galloway and Francis S. Rile of the Menlo Park offices of the USGA, noted that in 1993 that.

levels rise; conversely during other seasons they fall as water is drawn down, never quite regaining their original levels.[37] The magnitude of the risks associated with this annual rise-then-fall of soil levels is not predictable.

Both the Authority and Regional Consultants (RC) for that zone have known about the soils' rise-fall problem for some time. In June 2013 the RC said; *"As noted in previous monthly progress reports, the RC considers a lack of adequate geotechnical data a serious procurement risk to the Authority, as the design is currently based on assumed ground conditions."* [38] That same report also shows, *"The RC has identified subsidence as a project risk, and considers this a program-wide issue that affects several HST segments and that may influence the choice of HST infrastructure, such as trackform. . . Recent survey of the existing Authority monuments indicated up to 18 inches of settlement since their installation circa 2011, as well as some lateral movement."* [39] This eighteen inches of subsidence within two years seems to be more rapid than historical records suggest it would.

The soils' rise-fall problem is a significant safety and cost issue. Even a slight misalignment of track resulting from an unpredictable soils' rise or fall, would put the safety of passengers and crews at risk on a train operating at 220mph. While small realignments for seismic and centrifugal force effects are made daily in Europe and Asia to HSR tracks; at a certain unknown point, realignment is not an option and only reconstruction can solve the problem, which again may only temporarily 'solve' the problem. An accident on a train traversing unstable and unpredictable soil levels at 220mph is not a possibility: it's a probability.

Because the verticle and horizontal alignments of track for a train operating at 220mph must be extremely accurate and continually maintained as accurately, the costs of building and maintaining an HSR-Ready track bed to compensate for such subsidence/rising cycles will be very expensive. That portends both higher capital and operating costs, probably not accounted for

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"The maximum subsidence, near Mendota, was more than 28 feet." page 23 of "Largest human alteration of the Earth's surface" Also see pg. 31 showing "Major subsiding areas in the San Joaquin Valley.

[37] See: Ben E. Lofgren, USGS, Sacramento, CA; Field Measurement of Aquifer-System Compaction, San Joaquin Valley, California, USA, pg 281: *"During February, for example, a water-level rise of 11 feet resulted in a measured expansion of about 8 x foot per foot of water-level rise. From March 9 to March 21, a water-level decline of roughly 50 feet produced an abrupt compaction of 0.034 foot or 0.68x10-3 foot of compaction per foot of water-level decline. The delicate sensitivity of the aquifer system to changes in effective stress is readily apparent. Compaction frequently begins within minutes after pumping effects are observed. . . Most of the compaction is non-elastic, representing a permanent decrease in the volume of the stressed deposits."* On page 278, geologist Lofgren also identifies the worst subsidence-rising cycle to be between Tipton and Delano, directly in the route of the high-speed train.

[38] Kinzie Gordon, Deputy Project Manager, Ongoing Items, pg.5 of Regional Consultant Monthly Progress Report, Fresno to Bakersfield, for the Period of April 27, 2013 through May 24, 2013; submitted June 10, 2013.

[39] Op. Cit. Kinzie, pg. 6. According to that same, June 2013 regional consultant's progress report, by the engineering consultants URS, a *"Revised Draft 15% Geologic and Seismic Hazard Evaluation Report"* was delivered to the Program Management Team and the Authority on April 19th 2013. CARRD is also aware that the Authority knows about these subsidence-lifting problems. But despite repeated public records requests for the document, the Authority 'stonewalled' CARRD on the evidence to prove they know.

in the Authority's estimates, such as shown in Appendix B (Rows 8-13). While the exact capital cost increases to compensate for the soils' rise-fall problem are unknown, the RC points out, they are ". . *a serious procurement risk . .* " Those increases are likely to show up as engineering estimates become more intelligent than their present 15% estimate level, and would probably add on more millions into contractors' bids.

The Regional Consultant's note that "*Uncertainty about ground conditions could have significant impacts on bid prices, and likely would result in claims from the design/build contractor."* is an indicator of how fragile and unpredictable the supposedly fixed prices of consortia are. [40] If contractors 'trigger' such claims under legitimate *force majeure* clauses, they will effectively negate the financial protection Californians were assured of by the use of design/build contracts.

By ignoring not only the Central Valley's geology and their own Business Plan when convenient; 'cherry picking' what was useful to them to make public, and altering the terms and conditions in their pliable relationship with the DOT/FRA, while applying 'optimism bias' to its computations, the Authority managed to 'save' over a billion dollars on paper while inching forward towards building what will simply duplicate the track that Amtrak's San Joaquin line uses today.[41]

Despite accounting legerdemain, the Authority cannot change several 'starting-line realities' – The Initial Construction Section (ICS), known to the DOT/FRA Agreement as the 'Central Valley Project' (CVP) – building from Madera to Bakersfield – was supposed to start in November 2012.[42] In late 2012, the start date was pushed back to mid-2013. By June 30th 2013, the Authority had purchased no land, and none of the several agencies such as Caltrans, various counties, cities or special purpose governments or private entities such as ATT&T or BNSF in the Valley had begun the relocation or construction the Authority envisioned. The start date will likely be that attested to – sometime in 2014.[43] This is important for two reasons.

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[40] Kinzie Gordon, Deputy Project Manager, Ongoing Items, pg.5 of Regional Consultant Monthly Progress Report, Fresno to Bakersfield, for the Period of April 27, 2013 through May 24, 2013; submitted June 10, 2013.

[41] The term 'optimism bias' is a polite, academic phrase used to describe the conscious or unconscious choices by megaproject planners to underestimate costs and overestimate demand for large transportation project. See: Bent Flyvbjerg, "Quality Control and Due Diligence in Project Management: Getting Decisions Right by Taking the Outside View," International Journal of Project Management (November 2012), http://dx.doi.org/10.1016/j.ijproman.2012.10.007

[42] See the 2010 Agreement, page 47 [PDF 48], and the 2012 Amended Agreement, pg. 80 [PDF 82]. *"Because the Project is more expensive than any single funding source available, the Project scope is separated into two geographic sections that are integral and interdependent. In combination with each other, they will comprise and describe the entire initial Central Valley Project. This Agreement covers final design and construction activities between Fresno and Bakersfield (Kern County). . .and construction activities between Madera County and Fresno."*

[43] John Popoff, Parsons Brinckerhoff's director for the Central Valley construction attested in a court declaration; *"Construction in earnest is not expected to commence until very late 2013 or early 2014."* [Popoff declaration signed 31 October 2012, page 3 [PDF page 5]. Ten days later, Mr. Popoff changed his

The end of Federal FY17 is still very real – Although the DOT/FRA and CHSRA changed DOT's 2011 policy and now allow Federal ARRA funds to be spent prior to State bond funds, the September 30th 2017 deadline to fully spend the ARRA funds still exists. Instead of having 58 months to spend $2.32 Billion, if they start in March 2014, they will have only about 42 months – a twenty-five percent decrease of their 'window' to conform to unalterable federal law.

Time erodes the value of money – The $3.25 Billion the FRA awarded the Authority in 2010 is fixed; but construction costs rise. Using the Authority's construction cost inflation index (2.9% pa) the combination of Appropriations and ARRA grants is worth $2.98 Million in mid-2013 – $275 Million less than when awarded in 2010. Next year it will be worth $361 Million less if all those funds were spent in 2014. By 2018, when the CVP is supposedly complete, the Federal grants and Appropriations will have lost a considerable amount of their value.

Costs will rise because engineering estimates are still relatively crude – The cost calculations of Central Valley Project (ICS), as shown in 2012 Authority and FRA documents, were still based on engineering calculations that were at the 15-30% estimate range. As portions of those estimates have risen to the 30% range, estimated costs have increased. Cost estimation accuracy has not improved over time, and California's largest transportation project, the yet-unfinished east span of the Oakland Bay Bridge at about five times its original estimate, is a prime example.[44] There is no reason to think costs will not continue to increase as engineering groups, including the TPC-led consortium, discover more on-the-ground realities of building the Initial Construction Section.

Most importantly, the $985 Million award to the TPC-led consortium is nowhere near the full costs of building the 29 miles of Construction Project 1 (CP1) – The 'take away' reality from Figure 1 in Part One is that the TPC-led consortium's $985 Million contract is, at most, only two fifths of the total cost of building CP1.[45] Clearly the TPC-led consortium's contract ($985 million) is not the complete picture of "*ROW acquisition and site work, final design, and construction of fully grade-separated mostly dedicated HST guideway including aerial structures*

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statement and re-filed; saying, *" Construction activities would commence no earlier than the second half of 2013 sometime after NTP issuance, with construction likely commencing with more limited construction activities then ramping up thereafter."* See Popoff declaration signed November 9, 2012.

[44] See: Flyvbjerg, Bent; Bruzelius, Nils and Rothengatter, Werner: Megaprojects And Risk, An Anatomy of Ambition; Cambridge University Press, 2003.

[45] It is important to remember that the estimates in Figure 1 are still at the 15-30% engineering estimate stage. As engineers learn more about construction and mitigation costs, as land purchases increase from a probable optimistic estimate, total costs are likely to increase.

(viaducts) and track work." that the DOT/FRA Agreement with CHSRA requires.[46] As Appendix A shows, the real costs are several times that consortium's contract and mostly go to land acquisition, relocating infrastructure, and finishing the project to be Amtrak-Ready.

While the public relations effort may be focused on how much was saved by awarding a contract to the TPC-led consortium, the reality is those savings are almost phantom. When all the cost components are considered, as in Appendix B, total costs grew by 11%, from $2,412 Million to $2,684 Million.[47] As also shown in Appendix B, Tutor Perini/Zachry/Parsons' bid plus the other cost items was about $150 Million less than the $1.45 Billion the Authority had estimated for CP1[48]. At the Authority's May Board meeting, CEO Morales defended the choice as *" . . . an outcome that produced greater transparency, more competition and better prices, which is what we achieved."* [49]

How much better a price is the TPC-led consortium's bid? Taken at face value, the Authority saved Californians 10% of CHSRA's 'in-house estimate.' [50] But the Authority selected the contractor whose financial situation is unclear and who scored the lowest of the five bidders on technical merit.[51] It would have cost about $100 million (10%) more than the TPC-led consortium bid to have the second technically highest ranked and next-to-lowest-cost consortium, Dragados/Samsung/Pulice, build CP1.[52] Against the total costs of building CP1 to Amtrak-Ready specifications that $100 million difference in bids becomes less than 4% when compared with the TPC-led consortium's bid.

In the vernacular, the Authority chose an inexperienced firm with a D+ technical rating instead of an HSR-experienced firm with a B+ rating to save

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[46] See the December 2010 DOT/FRA-CHSRA Agreement, pg. 47 [PDF 48] - and the 2012 Amended Agreement, pg. 81 [PDF 83]
[47] See: 'Total Cost' in Column L of Appendix B
[48] See Appendix B, Column G, 'Construction.' The FRA projection in Row 9 was $1,451 Million, compared to the latest CARRD projection in Row 16 that incorporates the TPC bid, at $1,309 Million.
[49] See CEO Jeff Morales at the 58 second mark of http://www.youtube.com/watch?v=DJodNiagrXo&feature=youtu.be.
[50] See Appendix B, column G, 'Construction.' The budget amount in the FRA Agreement for CP1 (row 9), was $1,451 Million. The latest CARRD projection on row 16 (from Appendix A and incorporates the TPC bid) is $1,309 Million – about 10% less.
[51] Concerning TPC's financial situation, see: Moody's downgrades Tutor Perini's CRF to Ba3: outlook stable, Global Credit Research – 14 September 2012. Found at: http://www.moodys.com/research/Moodys-downgrades-Tutor-Perinis-CFR-to-Ba3-outlook-stable--PR_255236. "*The rating action reflects Tutor Perini's weaker than expected operating earnings and debt levels, which have resulted in weaker credit metrics."* See the second page of: http://www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=2147483802. According to CHSRA documents, TPC's Technical Proposal Score was 20.55 out of a possible 30 points, a score of 69% of the possible technical points. It was the lowest technical score of the five bidding consortia, while the average of the top three bidders 83% (a 25 point average). The highest technical rating went to California Backbone Builders with a score of 27.6; the next highest to Dragados/Samsung/Pulice with 26.13; the third to California High-Speed Ventures with 21.41 and the fourth to California High-Speed Rail Partners with 20.70. The highest score was a third higher than TP's. The second highest was more than a quarter higher than TPC's.
[52] Dragados/Samsung/Pulice bid price, $1,085,111,111 was 10% higher than TPC's.

3-4%. Given TPC's financial history, and a history of construction costs for major projects such as the Bay Bridge, the Authority's 'savings' may come back to haunt California.

Even if the legal issues on funds for the Madera to Fresno section are somehow resolved, that still leaves financial problems for the remaining sections of the Initial Construction Section (ICS) – As Appendix B and Appendix C and their accompanying analyses show, the DOT/FRA and CHSRA may have a false sense of the ability of their remaining $4.7 Billion to build the last 106 miles of track bed south from Fresno to Bakersfield (CP1C and CP2, CP3, and CP4).

Can the 130 miles of the ICS be completed? As the current FRA-CHSRA Grant Agreements are structured, the answer is most probably 'No.' This is because there are insufficient FY10 funds to complete the parts of CP1 north of the Fresno HSR Station. The only way to get that part built is to transfer some Federal ARRA grants to that part of CP1. This may be illegal.

If this contractual problem can be resolved legally, it appears there are adequate funds, in total, to build the ICS, but only if the actual costs are equal to the cost projections in the 2012 DOT/FRA-CHSRA Agreement.

However, if ICS costs escalate to the latest CARRD estimate, there is a shortfall of at least $969 Million. This shortfall might be partially mitigated if the Authority can increase its 'match' rate to 50:50 across all of the Agreements. While violating the legality of the Funding Plan, such a move would increase Prop1A funding by about $630 Million; bringing the shortfall down to about $335 Million.

What happens if the Central Valley Project overruns its presently estimated costs? – The risks of understated prices are high and not just for reasons of the Authority's 'fudging.' In the 2012 Agreement, the Authority assumed a DOT/FRA reserve of $108 Million. But these funds are not for covering cost over-runs.[53] Four hundred and sixty Million ($460 Million) of 'Contingencies Reserves' were specified in the budget portions of the earlier FY10 and ARRA Grant Agreements. However, by the December 2012 version of the Agreement, these reserves seem to have disappeared.[54] There appear

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[53] In reality the $108 Million is a FRA Reserve set aside to provide a northern and a southern connection spur from the ICS to the existing BNSF tracks that Amtrak currently uses. See the 2012 FRA-CHSRA Grant Agreement, Task 9.2 on page 92 (PDF 94) and page 81 (PDF 83). The Agreement states that if there is no more funding for the rest of the IOS, as the ICS nears completion, then these Federal funds will be used to allow Amtrak to use the ICS tracks. The impact of this is that there is really $108 Million of Federal funding not available until the very end of the project, and with 50% - 50% matching that precludes $108M of Prop1A funds to be spent. If the construction of the IOS is going to proceed, these FRA funds can be released and this total of $216 Million will build the last 5-6 miles of the ICS. If the IOS construction is not going to continue once the ICS is done, the Federal funds will be needed for the connecting spur. This will mean that the ICS will be 5 to 6 miles shorter than Appendix B projects when it is connected to the BNSF tracks,.

[54] See the 2012 Agreement, pg. 97

to be no visible cost overrun contingencies in the 2012 DOT/FRA-CHSRA Grant Agreement.

Given the history of overruns in megaprojects, a zero contingency allocation of funds seems foolhardy. A 2003 study of more than 200 large-scale rail transport projects showed the average cost overrun to be 45%. [55] Since this is a megaproject, and the first of its kind in the US, it's legitimate to ask how many miles south of Madera, would the Central Valley Project terminate if the cost overruns are no greater than the average 45% for large scale transport projects? That cost increase would reduce the ICS' length to about 90 miles (130 miles/1.45 = 90 miles), or some 40 miles short of Bakersfield: eliminating all of CP4 and a portion of CP3. The southern termination would be about 10-15 miles south of Corcoran: at least 40 miles short of Bakersfield.[56]

After more than $7 Billion of State and Federal funds have been exhausted, the Central Valley Project could result in nothing more than a dirt mound with Amtrak-Ready tracks atop.[57] The Federal government's $108 Million 'independent utility rescue clause' will go into force and connect the otherwise 'stranded asset' to the existing BNSF right-of-way, presently used by Amtrak's San Joaquin line. [58] Having "*. . fully grade-separated mostly dedicated HST guideway . ."* as described in the DOT/FRA-CHSRA Agreements, will become another politically-motivated fantasy. [59]

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[55] See: Flyvbjerg, Bent; Bruzelius, Nils and Rothengatter, Werner: Megaprojects And Risk, An Anatomy of Ambition; Cambridge University Press, 2003. For example, Boston's Big Dig, managed by the same Parsons Brinckerhoff presently employed by the CHSRA, cost more than three times its original estimate.
[56] The driving distance from Corcoran to Bakersfield is 65 miles. See: http://www.travelmath.com/drive-distance/from/Bakersfield,+CA/to/Corcoran,+CA
[57] This includes the $6.5 Billion spent on land acquisition, construction and relocating existing infrastructure, and the more than $600 million that will have been spent by the Authority on planning, design and public relations since its inception. This also assumes nothing during planning or construction goes any more awry than the Authority's contingency reserves have been calculated to absorb. Given the history of the east span of the Bay Bridge's overruns, this is an optimistic scenario.
[58] See the 2010 Agreement, pg. 47 [PDF 48] and the 2012 Amended Agreement, pg. 81 [PDF 83] *"The Interim Use Reserve includes a connection on each end of the initial construction section in the Central Valley with the Burlington Northern and Santa Fe Railway Company (BNSF) mainline, plus associated positive train control (PTC), and interim station (i.e., Amtrak) capital costs, totaling $108 million. The funds allocated to this Interim Use Reserve are to be 100% Federal funds."*
[59] See the 2010 Agreement, pg. 47 [PDF 48] and the 2012 Agreement, pg. 81 [PDF 83].

Appendix A

Figure 1- Column B – Costs Between Madera and south of Fresno – CP1A, CP1B and CP1C – 29 Miles [60]				
Stage	**Stage 1**	**Stage 2**	**Stage 3**	**Stage 4**
	Acquire Land	**Design - Build**	**Amtrak- Ready**	**HSR- Ready**
Task Definitions By	**& Eminent**	**Contract**		**Traffic Mitigation**
At the end of Stage	**Domain**	**(CP1)**	**(CP5)**	**& Electrification**
Land Acquisition-Estimate [61]	$575,000,000			
Tutor Perini, etc. Contract [62]		$985,000,000		
Provisional/Contingency [63]		$53,000,000		
Caltrans [64]		$180,000000	$46,000,000	
City of Fresno [65]		$60,000,000		
City of Fresno [66]		$15,000,000		
PG&E [67]		$50,000,000		
AT&T [68]		$12,497,000		
Union Pacific EP contract [69]		$15,000,000		
BNSF [70]		$15,000,000		
Program management		$208,776,000		
Previously allocated [71]		$50,000,000		
Additional design work [72]		$41,000,000		
Prep of track and rail [73]			$300,000,000	
Environmental mitigation [74]		$12,000,000		
Reserves [75]		65,781,000		
Traffic Mitigation [76]				$15,000,000
CP1 made HSR-Ready [77]				$450,000,000
Spending by Stage	$575,000,000	$1,763,054,000	$346,000,000	$465,000,000
Cumulative Spending	**$575,000,000**	**$2,338,054,000**	**$2,684,054,000**	**$3,149,054,000**

[60] CARRD assembled the amounts used in Figure 1, with the exception of the award to Tutor Perini, from individual Master Agreements with the various cities, counties, special purpose governments and private entities (BBSF, UPRR, AT&T, PG&E) found in RFP documents. Sources include: http://hsr.ca.gov/Programs/Construction/HSR11-16_Design_Build_Contract/addendum3.html and http://hsr.ca.gov/Programs/Construction/HSR11-16_Design_Build_Contract/addendum4.html. Note: Under the Authority's new web redesign, the link won't take you to the final destinations. Need to 'click' on Book 3 to see a list of master agreements. For an example of a Master Agreement, see the CHSRA's 'Agreement Status with the City of Fresno, dated July 31st 2012. Found at: http://hsr.ca.gov/docs/programs/construction/RFP_AD4_B3_PtD1_FresCity_MstrAgree.pdf
[61] A land acquisition item for $658,257,000 was in a Public Works budget, found at: http://www.spwb.ca.gov/archives/agendas/2012.php Go to March 9, 2012 – Agenda w/ Analysis, PDF pgs 31-34. Estimate lowered by $83,257,000 (12%) to not double count land acquisition costs of Highway 99 relocation.
[62] Tutor Perini/Zachry/Parsons was awarded a $985 Million contract to construct CP1 in June 2013.
[63] In a June 2013 memo, Chief Program Manager Frank Vacca said: "*The authority expects to allow an extra $53 million to cover the potential costs . . .*" See: Instructions to Proposers, Addendum 9. Also see:http://www.fresnobee.com/2013/06/04/3327117/high-speed-rail-contract-to-be.html.
[64] Awarded to Caltrans to move Highway 99 per *Board* Resolution 8/2/2012. See: http://cahighspeedrail.ca.gov/assets/0/152/232/496/c653a39c-70fb-49b2-a177-33b65c481e72.pdf
[65] See: Addendum 9, Special Provisions (Veterans Blvd. Overpass excluded). Cost of project, including road extension, is $111,041,000. CHSRA estimate: $27,783,849 Task R4. Found at http://www.dot.ca.gov/dist6/environmental/envdocs/d6/veterans_blvd_080812.pdf.
[66] Allocated for roadway improvements to Golden Gate Blvd.
[67] For the replacement and/or movement of transmission towers and related transformers, etc.
[68] For the replacement and/or movement of communications transmission towers
[69] Unspecified UPRR projects, but not part of the Tutor Perini/Zachry/Parsons contract
[70] Unspecified UPRR projects, but not part of the Tutor Perini/Zachry/Parsons contract
[71] Forty-three percent from a total $117 million budget presented to Public Works Board.
[72] Assumed to be for engineering companies' final design work.
[73] Track ballast, drainage, rail tracks, station platforms, and signaling to be provided in Construction Project 5, and is not part of the TPC contract. Estimated at $10 Million/mile plus $10 Million for the Fresno Station. The $10 Million/mile supposedly provides two parallel tracks of HSR-Ready rail. If only Amtrak-Ready rail is to be installed this estimate is sufficient, but inadequate if the conventional rail track needs to be replaced by HSR-Ready rail during the IOS phase.
[74] Mainly to the City of Fresno for business relocations and disruptions
[75] This is the original contingency that was included in the CP1 budget. This is not part of the $108 Million FRA Reserve set-aside to attach the ICS to the BNSF tracks for Amtrak to run conventional diesel on the ICS.
[76] Pedestrian overpasses/ other traffic mitigation related to HSR station traffic
[77] Electrification, HSR signaling, HSR stations, passing tracks, share of maintenance

Appendices B and C

Financial Analysis Using Appendix B and C

Appendix B provides a view of the potential increased ICS construction cost.

The base line data are the estimates in the December 2012 DOT/FRA-CHSRA Grant Agreement, on page 97. These are shown on rows 6 though 13. The Track and PP&E, PM costs were not broken out by the different CPs, so the Track estimates were allocated proportional to the number of miles of track for each CP. The PP&E, PM costs were allocated proportional to the total Land, Construction, and Track costs for each CP compare to the Totals provided in the Agreement. It does not appear there were any reserves for cost over-runs on page 97. Under "Other", see column K, the $226 Million for CP1 is the SR-99 re-alignment and the $108 Million for CP1 is the FRA Reserve for the track spurs to connect the ICS to the BNSF tracks.

Row 16 shows the latest CARRD estimate for CP1 costs, from Appendix A. Row 17 shows the latest estimates as a percentage of the FRA Agreement CP1 projections.

Row 23 is the sum of the CP2, CP3 and CP4 costs in the FRA Agreement, in rows 10, 11, and 12.

Row 26 is the "Uplifted" costs for CP2 through CP4 based on the percentage changes in row 17.

Row 27 is the sum of the latest CARRD estimate, row 16, and the revised CP2 through CP4 estimates, row 26.

Column M shows the cost per mile for the various CPs, and totals.

Appendix C provides an analysis of the available ICS funding and he potential funding shortfall

This analysis breaks CP1 into two parts. The first part is CP1A plus CP1B, on row 9. These sections cannot receive ARRA funds as they are north of Fresno. The second part is CP1C, on row 10. This section can receive ARRA funds as it is south of Fresno. CP2, CP3 and CP4 are shown on row 11, and they can all receive ARRA funds.

Columns C and D show which sections can receive the two different types of FRA grants funds, the FY10 grants and the ARRA grants.

Cells E9 and E10 allocate, based on miles, the FRA Agreement projection for CP1, see Appendix B, cell L9. Cell E11 is from Appendix B, cell L23. Cells F9 and F10 allocate, based on miles, the CARRD Projection for CP1, see Appendix B, cell L16. Cell F11 is from Appendix B, cell L26.

Columns G and H show the available Grant funds discussed in the November 2011 Funding Plan.

Column I shows the Prop 1A funds committed based on the existing 2011 and 2012 DOT/FRA-CHSRA Agreements, with matching ranging from a high of 50% to a low of 20%. Column J shows the maximum possible Prop1A funds that could be committed if all the Agreements were increased to 50%, the highest Prop 1A will allow.

Column K shows the total funds available today; it is the sum of columns G and H, plus I. Column L shows the total funds that could possibly be made available by changing all the Prop1A matching percentages to 50%; it is the sum of columns G and H, plus J.

The amount of Funding Sufficiency or "Shortfall" is shown in columns M through P. Columns M and N are based on the current Prop 1A matching percentages. Columns O and P are based on the Prop 1A matching all being raised to 50%.

Column M compares the FRA Agreement projected costs, column E, to the Total Funds available today, column K. This shows that CP1A and CP1B are short $707 Million, and that CP1C plus CP2 through CP4 have an excess of $651 Million.

Column N compares the CARRD projected costs, column F, to the Total Funds available today, column K. This shows that CP1A and CP1B are short $923 Million, and that CP1C plus CP2 through CP4 also have a short fall of $37 Million.

Column O compares the Agreement's projected costs, column E, to the possible Total Funds available (if the Prop 1A matching rate is increased to 50%), in column L. This shows that CP1A and CP1B are short $138 Million, and that CP1C plus CP2 through CP4 have an excess of $717 Million.

Column P compares the CARRD projected costs, column F, to the possible Total Funds available (if the Prop 1A matching rate is increased to 50%), in column L. This shows that CP1A and CP1B are short $363 Million, and that CP1C plus CP2 through CP4 have an excess of $28 Million.

What does this mean going forward? Assume the FRA is able to abrogate its prior DOT/FRA contractual obligations and transfers half the funds needed– $90 Million to $465 Million of ARRA grants – to complete the CP1A and CP1B (Madera to Fresno). Also assume the State matches these with an equal amount of Prop1A funds. These are both shown on Appendix C. The ICS's projected costs (see the top of Appendix B) are estimated in the December 2012 Grant Agreement to be in the range of $6,054 Million. However, applying the CARRD analysis of CP1 to the entire ICS raises the ICS projected costs to $6,967 Million. [78] Based on the Agreement's estimates, and the legal possibility shifting funds from CP2 through CP4 to be used in CP1A and CP1B, four potential scenarios are:

1. Appendix C shows that if the cost projections for CP2 through CP4 in the Agreement are not exceeded, about $650 Million will be remaining to build the remainder of the ICS (CP1A and CP1B). This would almost offset the shortfall projected in CP1A and CP1B of $707 Million, if the FRA would remove the ARRA funding limitation.

2. If CP2 through CP4 costs increased proportionally to the CARRD increases for CP1, then the Authority will have only enough in ARRA grants to fund the CP2 through CP4's construction. However, there would be an overall shortfall of about $930 Million to build CP1.

3. If the Prop1A funding is increased to a 50% - 50% match across all of parts of the Agreements, there should be sufficient funds for the ICS if the costs in the FRA Agreement are achieved.

4. If the Prop1A funding is increased to a 50% - 50% match across all of parts of the Agreements, but if the CARRD-based costs occur, there will still be a $335 Million shortfall for the entire ICS; meaning there would not be funds for some portion of CP4.

In summary, if ARRA funds are legally moved from CP2 through CP4 and spent on CP1A and CP1B, the short-term shortfall situation may be improved. However, there will be insufficient funds to finish CP4 and perhaps part of CP3, unless the Prop 1A funding in increased to 50% - 50%, AND the cost estimates in the December 2012 FRA Agreement are achieved.

[78] Since there is only a single cost for all track in the ICS estimate (CP5), these ICS costs were allocated in Appendix C on a per mile basis to CP1. The same is true for PP&E and Reserves that were also shown as single ICS costs so they were allocated on a proportional basis for CP1 based on the direct costs of Land, Construction, Track and 'Other.' This was compared to the CARRD estimates for each of these cost categories, and the percentage difference was applied to the FRA Grant Numbers for CP2 through CP4. These 'uplifted' projections comprise the entire ICS CARRD estimate of $6,967 Billion – shown on the bottom of Appendix C and copied into Appendix B.

Appendix B

Projection of Increased ICS Construction Costs

(in $s, Millons)

						Allocation Method					
						Per Mile	% of Direct Costs	% of Direct Costs			
FRA Grant	**CP**	**Miles**	**%**	**Land**	**Construction**	**Track (CP5)**	**PP&E, PM**	**Reserves**	**Other**	**Total**	**$M/Mile**
Aggrement	1	29.0	22.3%	441.0	1,450.8	114.3	180.3	0.0	226.0	2,412.4	83.2
	2	32.0	24.6%	179.0	900.7	126.1	97.4	0.0	0.0	1,303.2	40.7
	3	41.5	31.9%	108.0	1,163.3	163.6	115.9	0.0	0.0	1,550.8	37.4
	4	27.5	21.2%	45.7	466.5	108.4	58.8	0.0	108.0	787.4	28.6
	Total	130.0	100.0%	773.7	3,981.4	512.3	452.4	0.0	334.0	6,053.9	46.6
Latest CP1 Projection											
	1	29.0		575.0	1,308.5	300.0	208.8	65.8	226.0	2,684.1	92.6
	% of Plan			130.4%	90.2%	262.5%	115.8%		100.0%	111.3%	
Uplift CP 2 to 4 as a group											
Current FRA Grant Agreement	**2 to 4**	101.0		332.7	2,530.6	398.0	272.1	0.0	108.0	3,641.5	36.1
Uplift by latest % increase											
Revised	**2 to 4**	101.0		433.8	2,282.3	1,044.8	315.1	99.3	108.0	4,283.4	42.4
Total	**ICS**	130.0		1,008.8	3,590.8	1,344.8	523.9	165.1	334.0	6,967.4	53.6

1 **Appendix C**

2 **Initial Construction Section - Funding Sufficiency**

3

4 (In $,Millions)

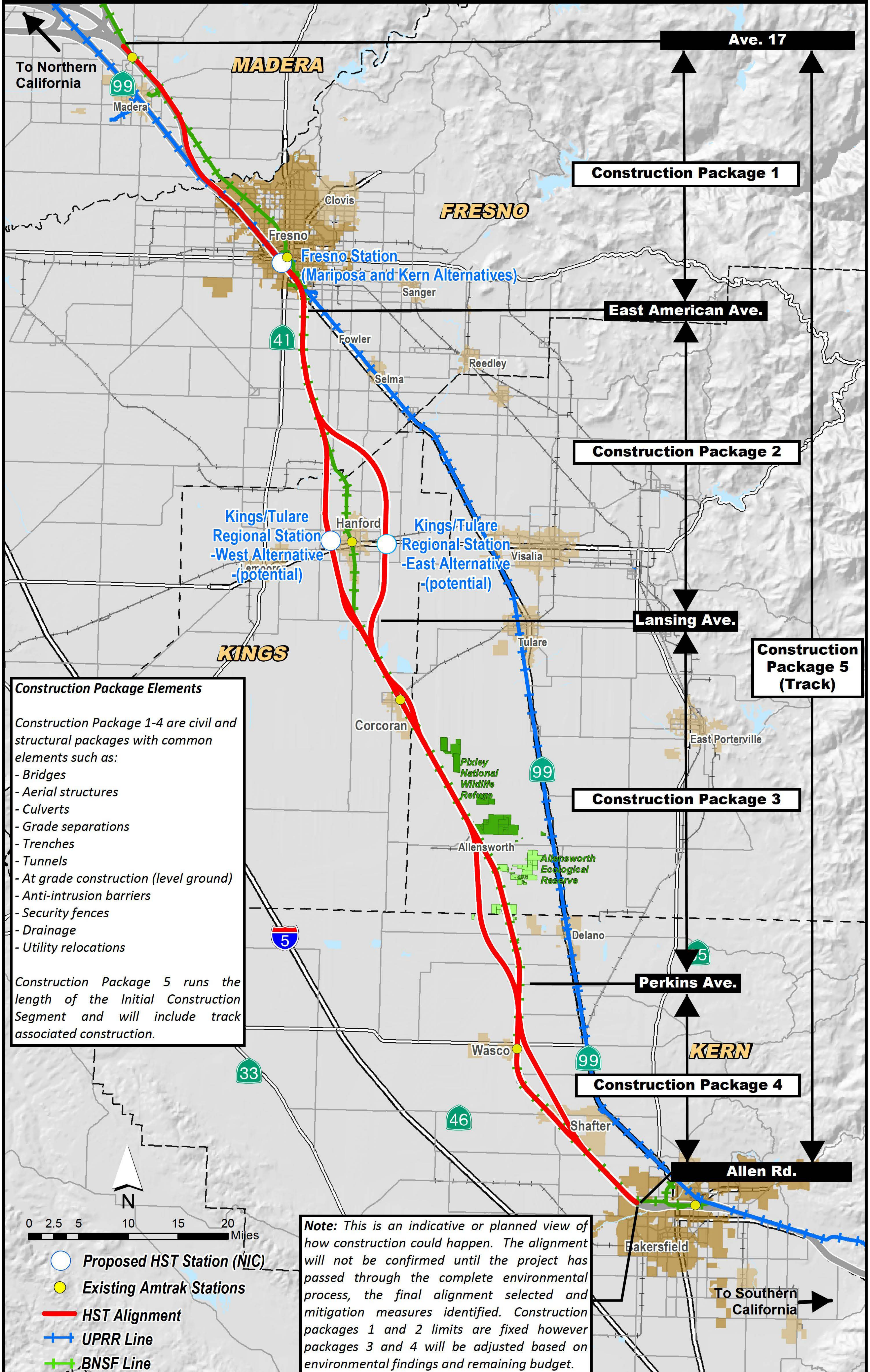
5

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
6/7			**Applicability of Funds**		**Projected Costs of Amtrack Ready**		**Available Funds from FRA**		**Current Commitment**	**Possible**	**Total Funds Available**		**Sufficient or (Shortfall)**			
8	**Miles**	**ICS Sections**	**ARRA Grants**	**FY10 Grants**	**FRA Agreement**	**CARRD Estimate**	**ARRA Funds**	**FY10 Funds**	**Matched Prop 1A**	**Maximum Prop 1A**	**Total Today**	**Total Possible**	**Today FRA Agreement**	**Today CARRD Estimate**	**Possible FRA Agreement**	**Possible CARRD Estimate**
9	24	CP1A and CP1B	No	Yes	1,996.5	2,221.3	0.0	929.0	360.0	929.0	1,289.0	1,858.0	-707.5	-932.3	-138.5	-363.3
10	5	CP1C	Yes	Yes	415.9	462.8	2,387.0	0.0	2,322.0	2,387.0	4,709.0	4,774.0				
11	101	CP2 to CP4	Yes	Yes	3,641.5	4,283.4	2,387.0	0.0	2,322.0	2,387.0	4,709.0	4,774.0				
12		Sum CP1C and CP2 to CP4											651.6	-37.1	716.6	27.9
13		**Totals**			6,053.9	6,967.4	2,387.0	929.0	2,682.0	3,316.0	5,998.0	6,632.0	-55.9	-969.4	578.1	-335.4

Appendix D

Map of the 130 mile Initial Construction Section (ICS) Showing Construction Projects (CP1-CP4, and CP5)

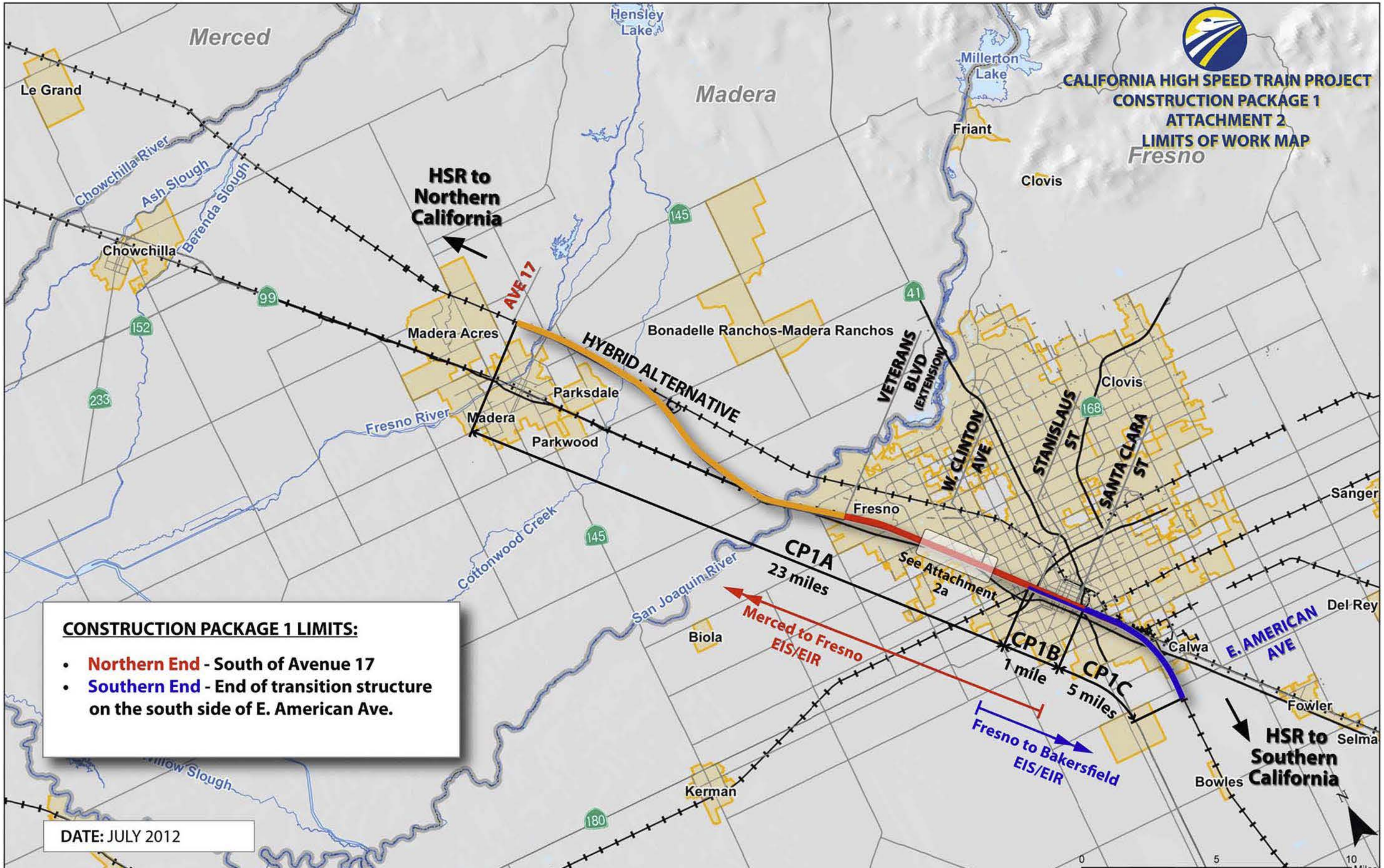
INITIAL CONSTRUCTION SEGMENT



February 2012

Appendix E

Detailed Map of Construction Project 1



08/22/2012 ADDENDUM 4 - RFP HSR 11-16

– ADDENDUM TO –
DIMINISHING PROSPECTS FOR THE CHSRA'S INITIAL CONSTRUCTION SECTION (ICS)

(Update – 1 February 2014)

The California High-Speed Rail Authority (CHSRA) and the Federal Railroad Administration/CHSRA's Cooperative Agreement define the Initial Construction Section (ICS) as existing within two Phase 1 Corridor segments: Merced-Fresno and Fresno-Bakersfield.[1] But their proposed project, shown in Exhibit A, doesn't start in Merced and go the 163 miles to Bakersfield. It starts in Madera, 33 miles or twenty percent closer Bakersfield.[2]

In the July 2013 Briefing Paper, Diminishing Prospects For the CHSRA's Initial Construction Section, the costs of acquisitions and construction for Amtrak-Ready track for the Madera-to-Bakersfield Initial Construction Section (ICS) were shown to be nearly $7 Billion ($6.97)[3] – about a Billion more than the Authority had in-hand or prospects for receiving. Yet the Authority still claimed they had enough to build 130 miles between Madera and Bakersfield (Exhibit A)[4].

Four months later, the Authority admitted the Merced-to-Bakersfield HSR-Ready price had escalated – to $13.2 Billion (in 2012 $s).[5] Exhibit B shows the HSR-Ready cost is now more than double the Authority's funds in hand. Parsing this HSR-Ready cost for 163 miles to only be Madera-to-Bakersfield, and reducing the costs to remove the costs of trains and program level costs, lowers the Authority's $13.2 Billion to $9.2 Billion to build an HSR-Ready ICS. That conservative figure is still 50% more than the Authority has in-hand or prospects for receiving.

Since cost estimates for the first 29 miles of construction (CP1A, CP1B and CP1C) have yet to be more than 60% reliable, and those south of Fresno are even less reliable, it is probable that a HSR-Ready, Madera-to-Bakersfield ICS cost could easily exceed $10 Billion.

Even reducing the project to Amtrak-Ready under the Authority's November 2013 admission makes the price tag $7.8 Billion – 30% more than they have in hand.

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[1] In recent months, internal CHSRA documents have begun to call the Initial Construction Section (ICS) the First Construction Segment (FCS). See: Memorandum from the CHSRA's Frank Vacca to Peter Osborn of the Federal Railroad Administration, dated August 28th 2013, PDF pg. 2 *"The CHSR Program has started construction on its First Construction Segment (FCS - Madera to Bakersfield).*

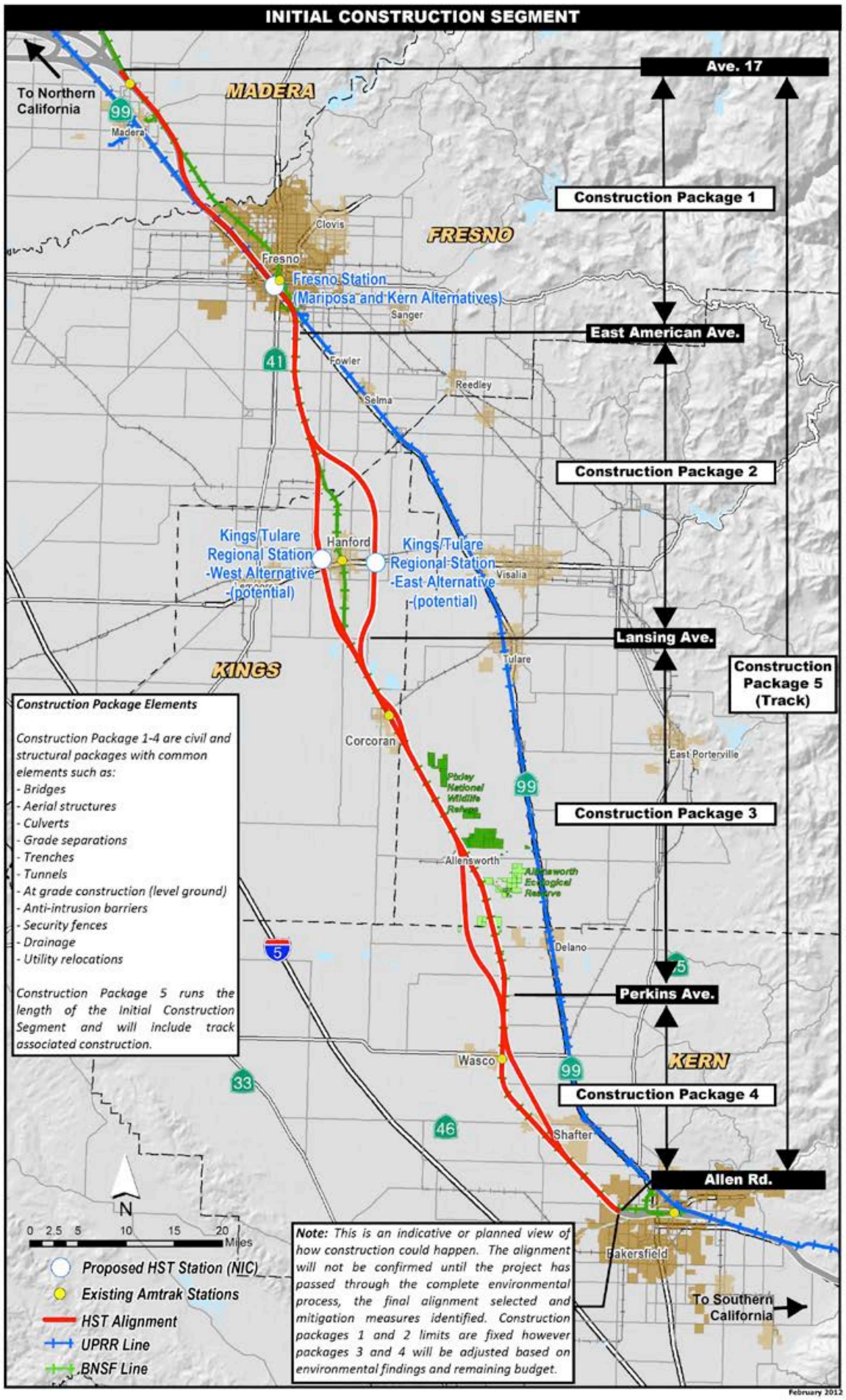
[2] This choice saves the Authority something like $2Billion in acquisition and construction cost.

[3] See Appendix B of Diminishing Prospects For the CHSRA's Initial Construction Section, Found at: https://www.sites.google.com/site/hsrcaliffr/home/briefing-papers/07-2013-diminishing-prospects-for-the-central-valley-project

[4] Ibid. See Appendix D and Appendix E..

[5] Table Two shows the Merced-Fresno leg at $5.482 Billion, and the Fresno to Bakersfield leg at $7.711 Billion. See page 12 [PDF 16] of the CHSRA, Project Update Report to the California State Legislature, November 15, 2013. Found at: http://www.hsr.ca.gov/docs/about/legislative_affairs/SB_1029_Project_Update_Rpt_11_2013.pdf

- Exhibit A -
Map of the 130-mile Initial Construction Section (ICS) Showing Construction Projects (CP1-CP4, and CP5)



– Exhibit B –
Page 12 [PDF 16] of the CHSRA, Project Update Report to the California State Legislature, November 15, 2013

CONSTRUCTION COST

Table 2 shows the construction cost estimates in YOE dollars from the 2012 Business Plan by project section. Approximately $8.1 to $8.2 billion in program wide costs, which were identified in the 2012 Business Plan, have been prorated across the project sections. These costs include approximately $4.4 billion for rolling stock, $1.5 billion for program, project and construction management costs, and $2.3 billion in unallocated contingency funds (approximately 3 percent of the overall cost of the project).

TABLE 2: CONSTRUCTION COST BY SECTION	
Baseline Budgets by Section	**2012 Business Plan Cost Alignment Estimate (YOE)**
San Francisco - San Jose	$8,363
San Jose - Merced	$19,757
Merced - Fresno	$5,482
Fresno - Bakersfield	$7,711
Bakersfield - Palmdale	$9,533
Palmdale - Los Angeles	$16,704
Los Angeles - Anaheim	$815
TOTAL	**$68,365**
(Dollars in millions)	

Table 3 shows the breakdown of costs for the contract awarded to TPZP for CP 1. The contract price for CP 1 is $969,988,000 with additional Authority-controlled provisional sums of $53,000,000 for utility relocation, construction contract work, and unforeseen circumstances, such as the discovery of hazardous materials. Table 3 also shows the $160,000,000 contingency, approved by the Authority Board of Directors, which was based on Authority staff's risk-informed contingency assessment reports and recommended contingency estimates and the unit price allowance for hazardous soil remediation.

TABLE 3: CONTRACT COSTS FOR CP 1	
Item	**Price**
CONTRACT PRICE	**$969,988,000**
Utility Provisional Sum:	$25,000,000
Construction Contract Work Provisional Sum:	$20,000,000
Building Hazardous Materials Provisional Sum:	$8,000,000
TOTAL PROVISIONAL SUMS	**$53,000,000**
CONTRACT PRICE + TOTAL PROVISIONAL SUMS	**$1,022,988,000**
Board of Directors approved Contingency	$160,000,000

Regarding: California High Speed Rail Authority's Petition for Exemption of Fresno to Bakersfield HST Section. (STB Finance Docket No. 35724 (Sub-No. 1))

Subject: Opposition and Protest Reply to the California High Speed Rail Authority's Petition for Exemption

Filed By: William H. Warren, Filing ID Number of 235332, March 7, 2014

<u>Attachment 3</u>

The History and Status of the CHSRA's Unlawful Funding Plan, dated March 2014.

The History and Status of the California High-Speed Rail Authority's Unlawful Funding Plan

Prepared By: by Mark Robert Powell – March 2014

The History and Status of the
California High-Speed Rail Authority's Unlawful Funding Plan

Summary:
This report, broken into five parts, traces the development of a funding plan for California's high-speed rail system from the inception of the Intercity High-Speed Rail Commission twenty-one years ago to the recent release of the California High-Speed Rail Authority's Draft 2014 Business Plan.

Part I briefly covers the development of California's former freeway plan, the statutorily required model for the development of a statewide high-speed rail network by 2020 and the means to fund its construction.

Part II details the Commission's, and later the Authority's, efforts to develop the required funding plan leading up to the Authority's 1999 decision to ignore the Commission's recommendation to secure a "base funding source" and instead pursue a "phased funding plan" that turned out to be no funding plan at all.

Part III gives the history of the delays in developing even a "phased funding" plan leading to both Governor Schwarzenegger's 2008 call for new legislation requiring a funding plan to assure that any state expenditures for the project would result in operational high-speed rail services and the legislation that ensued.

Part IV chronicles the escalating cost of the project and the Authority's attempts to circumvent the law requiring a funding plan, including attempts to scale down the project and make up for their funding shortfall with the promise of Cap and Trade funds.

Part V discusses the 2005 Statewide High-Speed Rail Program EIR/EIS that looked out to the year 2020 weighing the environmental impacts and benefits of a completed statewide high-speed rail network against a "No Project Alternative" and a "Modal Alternative" (increased funding for roads and airports) and found in favor of high-speed rail. With the Authority's own plans now silent on the date for completing the statewide system because it has no funds, with not even the smallest useable segment of high-speed rail scheduled for completion until well after 2020, and given that the funding plan for even that small segment has been found deficient by a Superior Court Judge, the paper suggest it may be time to halt the project entirely and conduct a new Statewide Program EIR/EIS reflecting the realities of 2014.

Notes Regarding the Format of this Paper:
Footnotes only cite links to on-line documents the first time the document is cited.
Previously cited footnotes are shown in brackets. For example [FN81] denotes previously cited footnote 81.
Italics are used for document titles and for quoted wording from California statutes.

About the Author:

Mark Robert Powell earned a Bachelor of Science in Chemical Engineering with Distinction from the University of Minnesota, class of 1976. Mark worked briefly in the computer industry programing and interfacing mini-computers to control complex chemical processes before moving to California to work for the Union Oil Company (Unocal) in their Chemical Division. Mark eventually became responsible for all of Unocal's chemical plants and shipping terminals in California, Oregon, and Washington overseeing the activities of 300 employees and an annual budget of $100 million before taking a position as Manager of Strategic Planning. He chose to leave Unocal during a period of downsizing prior to the company's acquisition by Chevron Corporation to pursue a career teaching chemistry and physics. Most of his teaching career was spent teaching Advanced Placement and International Baccalaureate Physics students at a private high school in Orange County. In retirement Mark began to study and write about the failings of California's high-speed rail project on his blog, Against California High Speed Rail, eventually leading to his research work for attorneys litigating the Case of John Tos, Aaron Fukuda, and the County of Kings versus California High-Speed Rail Authority, et al.

Part I
The Authority's Mandate - A Plan Similar to California's Former Freeway Plan

The California High Speed Rail Authority ("Authority") was chartered in 1996[1]. Like its predecessor, the Intercity High Speed Rail Commission ("Commission") chartered in 1993[2], it was tasked with *"preparation of a high-speed intercity rail plan similar to California's former freeway plan and designate an entity with stable and predictable funding sources to implement the plan*." This mandate is still found in the California Public Utilities Code.[3] A review of "California's former freeway plan" is worthwhile because the rail and freeway plans were to be *"similar"*.

California's Former Freeway Plan

In 1957, shortly after the passage in 1956 of the Federal-Aid Highway Act (establishing a federal excise tax on motor fuels to help fund the Interstate Highway System), California Senate Concurrent Resolution (SRC) No. 26 – *Relative to an over-all state-wide plan of freeways and expressways for the State of California* was approved and filed with the Secretary of State on January 25, 1957. SCR 26 foresaw a need for *"the establishment of a plan for such a state-wide system of freeways and expressways"* so that *"fiscal arrangements may be worked out and properly coordinated"*.[4] The Department of Public Works was to issue the plan.[5] The plan, entitled *The California Freeway System*, was issued on September 2, 1958 laying out 12,250 miles of freeways to be completed by 1980.[6] The roughly 20-year plan incorporated 2100 miles of freeways, built to Interstate Highway standards, as part of the Federal-Aid Highway Act of 1956.[7]

The "planning year" 1980 was chosen because "reasonable estimates of population, land use, and vehicular travel could be projected only so far into the future".[8] The Department of Public Works concluded their report by stating that the system outlined "is economically feasible and can be accomplished within the framework of present highway user finances within a reasonable period of years."[9] The *California Freeway and Expressway System Act*, codifying the

[1] Senate Bill 1420 (Kopp), Approved by Governor on September 22, 1996 and filed with Secretary of State September 24, 1996, Section 185010(h). See http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1401-1450/sb_1420_bill_960924_chaptered.pdf

[2] Senate Concurrent Resolution 6 (Kopp), Filed with Secretary of State July 20, 1993, Whereas section, paragraph 8. See http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0001-0050/scr_6_bill_930720_chaptered

[3] . California Public Utilities Code, Division 19.5, Chapter 1, Section 185010(h). See http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=184001-185000&file=185000-185012

[4] Senate Concurrent Resolution No. 26, Filed with Secretary of State January 25, 1957. Whereas Section, paragraph (e)

[5] Senate Concurrent Resolution No. 26, Filed with Secretary of State January 25, 1957. Resolved Section, paragraph (a)

[6] The California Freeway System, published September 2, 1958, page 25, The Freeway System, paragraph 1, Document available at UC Irvine Langson Library, Irvine CA

[7] The California Freeway System, published September 2, 1958, page 5, Introduction, paragraph 6

[8] The California Freeway System, published September 2, 1958, page 18, Study Methods and System Criteria, subsection Planning Period, paragraph 1

[9] The California Freeway System, published September 2, 1958, page 32, Conclusion

recommendations of the Department of Public Works, was enacted by Legislature and signed by Governor Pat Brown on June 19, 1959.[10].

Each year Annual Reports by the Division of Highways, Department of Public Works, discussed the funding plan; informing the public of progress being made to implement the plan and the sources and distribution of the public's funds. Quoting from the December 1962 Annual Report:[11]

> **"Highway Financing**
>
> Sound programing depends upon sound financing.
>
> With a known number of registered vehicles, it is fairly easy to predict revenues from taxable gasoline and diesel fuel consumption, drivers' licensing and registration fees, weight fees on commercial vehicles, and taxes on for-hire trucking.
>
> The State Constitution requires that all such highway-user funds be spent for road construction and maintenance and for the administration of the Division of Highways, Department of Motor Vehicles, and Highway Patrol. They may not be diverted for other purposes.
>
> The largest source of funds is the six-cents-per-gallon state gasoline tax. Four cents are spent on the construction and maintenance of state highways, 1 3/8 cents on county roads and 5/8 cent on city streets.
>
> The cities' share is distributed by the Division of Highways on a population basis, and the counties' share is distributed directly to the counties by the State Controller.
>
> Approximately one-third of these street, road, and highway funds represent moneys returned to the State from taxes imposed on the highway user by the federal government. This money is spent on the interstate routes (matched 9 percent by state funds) and on the federal-aid primary, secondary, and urban highways (matched 42 percent by the State from user taxes)."

The Annual Reports also reported budgeted total sources and distributions in percent by source and in total dollars. The following table is combined for comparative purposes from the December 1961 and 1962 Annual Reports.

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[10] Statutes of California - 1958-1959, Chapter 1062.

[11] 16th Annual Report of the Division of Highways, Department of Public Works, December 4, 1962, page 9, Highway Financing, paragraphs 1-6.

Highway User Taxes Including Federal Aid

Source	FY 1962-1963[12]	FY 1963-1964[13]
Gas Tax	43%	42%
Motor Vehicle Fees	18%	18%
Use Fuel Tax (Diesel)	3%	3%
Transportation Tax	2%	2%
Federal Aid – Interstate (9% state match)	27%	28%
Federal Aid – Regular (42% state match)	7%	7%
Total Percent	100%	100%
Total Dollars	**$658,370,017**[14]	**$695,927,042**[15]

It is clear that California's freeway plan did have "*stable and predictable funding sources to implement the plan.*" The California High-Speed Rail Authority, because of missed opportunities and what might be called "wishful thinking", never developed its required funding plan.

[12] 15th Annual Report of the Division of Highways, Department of Public Works, December 7, 1961, page 8, Table of Sources and Distributions. Document available at UC Irvine, Langson Library, Irvine CA.
[13] 16th Annual Report of the Division of Highways, Department of Public Works, December 4, 1962, page 10, Table of Sources and Distributions. Document available at UC Irvine, Langson Library, Irvine CA.
[14] 15th Annual Report of the Division of Highways, Department of Public Works, December 7, 1961, page 10, Highway Financing. Document available at UC Irvine, Langson Library, Irvine CA.
[15] 16th Annual Report of the Division of Highways, Department of Public Works, December 4, 1962, page 9, Highway Financing. Document available at UC Irvine, Langson Library, Irvine CA.

Part II
Early Attempts at a Realistic High-Speed Rail Funding Plan

Twenty-one years ago Senate Concurrent Resolution 6 (Kopp) spurred the creation of the Intercity High-Speed Rail Commission when adopted by both the Assembly and Senate, and filed with the Secretary of State on July 20, 1993. It cited the need for *"the preparation of a 20-year high-speed intercity rail plan similar to California's former freeway plan"* and *"an entity with stable and predictable funding sources to implement the plan"*.[16] The California Legislature asked the Commission to prepare a financing plan that would include, but not be limited to, private funds, state general obligation bonds, revenue bonds backed by incremental increases in the gasoline tax, airport funds, and potential alternative public funding sources.[17]

Progress Made by the Intercity High-Speed Rail Commission – 1993 to 1996
The nine members of the Commission with backgrounds in construction, finance, banking, law, engineering, railroads, and some experience in the public sector[18] completed five technical studies and a Public Participation Program[19] in addition to a report summarizing the Commission's work; *The High-Speed Rail Summary Report and Action Plan*, released December 13, 1996. The Commission recommended a network of high-speed rail similar to the one presented to the voters nearly 12 years later; a segment linking the centers of San Francisco and Los Angeles, mostly following State Highway 99 through the Central Valley before swinging southeast to run through Palmdale and with additional segments connecting to Sacramento and San Diego. It was estimated to cost between $12.1 and $16.5 billion for the San Francisco to Los Angeles segment and between $19.8 and $24.6 billion (in 1996 dollars) for the entire statewide system.[20]

The Commission sought to establish a "base funding source" that could reliably furnish 70-85%[21] of the capital required for construction. Quoting from the Summary Report:

> "In order to qualify as a base funding source, the source must be able to substantially finance the construction of the system, secure debt against the revenue source, and provide funding irrespective of the construction status or

[16] Senate Concurrent Resolution 6, Filed with Secretary of State July 20, 1993, Whereas Section, paragraph 9. See http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_0001-0050/scr_6_bill_930720_chaptered
[17] Senate Concurrent Resolution 6, Filed with Secretary of State July 20, 1993, Resolved Section, paragraph 13, items 1-5
[18] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Appendix B, Document available at Claremont Colleges, Honnold/Mudd Library, Claremont, CA.
[19] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Executive Summary, page 1
[20] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Capital Cost Summary Tables, pages 3-25 and 3-27
[21] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Major Secondary and Supplemental Funding Sources, pages 5-7 to 5-10, Secondary Funding Sources expected to each contribute less than 2% to the construction costs and Supplemental Funding Sources each expected to contribute less than 1% to the construction costs, the total was expected to close the funding gap left by the base or "primary funding source".

operational readiness of the system. In addition, the source must have a stable and reliable revenue growth potential."[22]

After analyzing sales taxes, gas taxes, airport taxes, highway tolls, federal funding, and state funding, the Commission found that only a 5 cent increase in the state's gasoline tax, or a ¼% increase in the state sales tax levied statewide, or a ½% increase in the state sales tax levied only in counties served by high speed rail met the Commission's criteria to "provide a realistic means of funding the project".[23] Of these options, the Commission seemed to favor a sales tax because of their concern over Section 1(b) of Article 19 of the California Constitution limiting the purposes for which gasoline taxes may be used.[24] However, the Commission left it up to the incoming California High-Speed Rail Authority to make the final decision.

Private funding was not considered a possibility because of the project's risk, but was thought of as a way to finance extensions to Sacramento and San Diego once the San Francisco to Los Angeles portion was shown to be profitable.[25] In other words, future profits of an operating line could be sold to investors in return for a portion of the capital needed to construct the extensions. Also, the Commission recognized that federal high-speed rail programs amounted to only $15 to $25 million per year under the then-current authorizations that were scheduled to end in 1997 and therefore could not be considered a significant or predictable funding source.[26]

With no private or federal support for the initial Los Angeles to San Francisco route, the Commission recognized an obvious fact; if Californians wanted a high-speed rail system, they would have to pay for it themselves. To implement the system, the Commission's first recommendation was that the Authority secure the statutory authority and the base funding source for the system. Quoting from the Commission's 1996 report: "There can be no significant progress on high-speed rail implementation nor can a private partner be selected until the voters have approved a source of base funding."[27]

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[22] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Overview of Funding Sources, page 5-2

[23] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Base Funding Options, page 5-3

[24] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Base Funding Options, page 5-5

[25] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Financing the System – Introduction, page 5-1

[26] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Base Funding Options, page 5-6

[27] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Executive Summary, page ES-16

The California High-Speed Rail Authority – 1997 to 1999

Senate Bill 1420 (Kopp) created the High-Speed Rail Authority and stated that *"the Authority shall prepare a plan for the construction and operation of a high-speed train network for the state, consistent with and continuing the work of the Intercity High-Speed Rail Commission conducted prior to January 1, 1997."*[28] Repeating verbatim words found in Senate Concurrent Resolution 6, except for the plurality of the word "sources", SB1420 framed the mandate for the newly formed Authority: *"In order for the state to have a comprehensive network of high-speed intercity rail systems by the year 2020, it must begin preparation of a high-speed intercity rail plan similar to California's former freeway plan and designate an entity* ***with stable and predictable funding sources to implement the plan."*** (Emphasis added).[29]

Beginning in 1997 and continuing through 1999 the Authority, using many of the same contractors used by Commission, repeated the Commission's work and came to largely the same conclusions. In December 1999 the Authority released its 2000 Business Plan, showing capital costs of $25 billion (in 1999 dollars) for the entire statewide system.[30] The plan also laid out a sixteen-year project development (6 years) and construction (10 years) schedule for the statewide system.[31] It contemplated "specific revenue-producing segments could be completed and opened earlier in the implementation schedule. For example, the core segment from Los Angeles to San Francisco could potentially be completed at the end of the seventh year (of the 10 year construction period) with completion of the remaining segments to follow."[32]

With regard to funding the system, the Authority's 2000 Business Plan presented two funding approaches; a "full funding scenario" based on a temporary sales tax and postulated on a decision to proceed with the statewide system in the year 2000, and a "phased funding approach" that promised to secure resources as necessary to "complete discrete phases of the project as expeditiously as possible."[33] The 2000 Business Plan also states that in March 1999 "the Authority adopted policies that served as assumptions to guide the development of both funding strategies." Board Meeting minutes and supporting documents from March 1999 are missing from the Authority's website. However, the 2000 Business Plan does refer to policies adopted by the Authority in March 1999 and itemizes these clearly in the plan.[34] Pertinent items from the plan are:

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[28] Senate Bill 1420 (Kopp), Section 185032. See: http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_1401-1450/sb_1420_bill_960924_chaptered.pdf

[29] Senate Bill 1420 (Kopp), Section 185010(h). See: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=184001-185000&file=185000-185012

[30] 2000 Business Plan, Section 2.3, Table 2.1, Capital Cost by Segment. See 2000 Business Plan http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2000_FullRpt.pdf

[31] 2000 Business Plan, Section 2.2, Figure 2.3, Implementation and Construction Schedule

[32] 2000 Business Plan, Section 2.2, Phase 3: Final Design and Construction

[33] 2000 Business Plan, Section 6.1, Two Funding Approaches, paragraph 1.

[34] 2000 Business Plan, Section 6.2, Financial Plan Policies

"The financial plan shall be prepared with a statewide temporary sales tax as the state revenue source, to the extent that state public funds are needed for the capital costs of building the high-speed train network, and only for so long as they are needed."

"The financial plan shall presume that the state will fund the base system fully and that no local funding participation shall be assumed in the base system."

"The Authority shall diligently seek partnership funding from the federal government to construct the high-speed train system. **However, federal grant funding shall not be included in the Authority's financial plan until a funding commitment is expressed by either the Congress or the administration**. To the extent possible, advisable, and cost effective, the Authority should seek federal loans or credit enhancements." (Emphasis added)

With the December 1999 deadline for release of the 2000 Business Plan approaching, the Authority was forced to select a preferred funding strategy. Drafts of the plan's Executive Summary, which included a section on funding to be voted on during the November 17, 1999 board meeting, began to circulate. In his November 9th draft of the Executive Summary, addressed to Board members Leonard and Bates, Executive Director Mehdi Morshed writes: "While the Authority has sufficient information and analyses to conclude that a high-speed train is a smart investment and should proceed, we do not believe asking the people of California to make a full-funding commitment for the project is a prudent course of action at this time for the following reasons." The Executive Director's reasons included; 1) necessary environmental work to define with more specificity the corridors, station locations, and cost of the system, and 2) two years of substantive discussions with the private sector and the federal government "which will likely reduce the investment the people of California will need to make in the system".[35] In Director Morshed's revised draft, written for the entire Board on November 15th, the last words of the prior draft were rewritten as "which will likely produce major reductions in the investment the people of California will need to make in the system."[36]

Resolution HSRA 99-8 *Motions on Recommendations to the Authority to Become Part of the Business Plan* detailing a preferred funding strategy was brought up at the November 17th Board Meeting and approved unanimously (9-0).[37] The motion "recommended to the Governor and the Legislature that California not proceed to fund the project fully in 2000, either through legislative action or by placing a full-funding proposal on the November 2000 ballot for the

[35] Memorandum from Executive Director Mehdi Morshed to Bill Leonard and Dr. Ernest Bates (Board Members), Subject: Conclusions and Recommendations, dated November 9, 1999, Executive Summary attachment, page 5. Located in California State Archives and not found on the Authority's website.

[36] Memorandum from Executive Director Mehdi Morshed to Chairman and Authority Board Members, Subject: Draft Business Plan, dated November 15, 1999, Executive Summary attachment, page 5. Located in California State Archives and not found on the Authority's website.

[37] FAX from Executive Director Mehdi Morshed to Congressman Jim Costa, Resolution HSRA 99-8 *Motion on Recommendations to the Authority to Become Part of the Business Plan.* Located in California State Archives and not found on the Authority's website.

voters to decide." It did recommend an expenditure of $25 million over two years for further program level environmental work. If the system still proved viable, it recommended spending $350 million over the subsequent three to four years to achieve full environmental clearance. In addition, it called for "an aggressive statewide effort to increase federal funding for both conventional and high-speed trains in California."

Wording regarding potential savings to Californians did appear in the 2000 Business Plan Cover Letter. The Letter speculated that "greater private sector funding, coupled with federal funding, would decrease greatly the amount Californians would need to invest, perhaps to only about one-third of the total project cost".[38] Such speculation also made its way it way into the plan's Executive Summary which said, "it is reasonable to anticipate that the federal government would become a financial partner in this project, reducing the capital needs to be borne by the California taxpayer."[39]

Both funding strategies made it into the 2000 Business Plan, but only the recommended strategy, the "phased funding plan," has been followed by the Authority since 2000. Stating that Californians would perhaps need to pay for "only about one-third of the total project cost", although totally unsupported in the plan, fit well with subsequent legislation scheduling a vote on issuance of $9 billion in high-speed rail bonds in November 2004.[40] The Authority's hoped-for significant private funds or grants from non-existent federal programs to create a "phased-funding plan" ignored the Authority's mandate still found in Section 185010 of the Public Utilities Code, which reads as follows:

> "185010(h*) In order for the state to have a comprehensive network of high-speed intercity rail systems by the year 2020, it must begin preparation of a high-speed intercity rail plan similar to California's former freeway plan and designate an entity with stable and predictable funding sources to implement the plan."*

Leery of levying more taxes on Californians, Governor Gray Davis never supported a sales tax that could have created a stable and predictable funding source to pay for high-speed rail. Instead, he would support the "car tax" to help solve the state's fiscal woes and be recalled from office in 2003.

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[38] 2000 Business Plan Cover Letter addressed to Governor Gray Davis and Members of the California Legislature, page 1, final paragraph. See http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2000_FullRpt.pdf

[39] 2000 Business Plan Executive Summary, Options and Recommendations section, page 3

[40] Senate Bill 1856 (Costa), Safe Reliable High-Speed Passenger Train Bond Act, Division 3 of Streets and Highway Code, Chapter 20, Article 3, SEC. 4(a) See: http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1851-1900/sb_1856_bill_20020919_chaptered.pdf

Part III
A Funding Plan That Never Materialized

Delayed a Funding Plan – 2000 to 2008

In the wake of the 2000 Business Plan's recommendation to pursue a "phased funding plan" and sunset provisions in existing law calling for termination of the Authority on June 30, 2001 unless a specified financial plan was approved by the Legislature or the voters prior to that date, AB1703 *High-speed rail service* (Florez) was enacted into law on September 28, 2000 extending the termination date of the Authority until December 31, 2003 and modifying section 185032 of the Public Utilities Code regarding plan submission[41].

With still no funding plan in sight, SB796 *High-Speed Rail Authority* (Costa) was enacted into law on September 19, 2002 eliminating the termination date of the Authority and obsolete provisions of existing law relating to submission of a plan to voters by 1998 or 2000. It instead authorized the Authority to submit financial plans to the Governor and to the Legislature.[42] On that same day, SB1856 *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century* (Costa) became law. It called for the issuance of $9.95 billion in state general obligation bonds to be submitted to the voters on November 2, 2004. Section 1 of SB1856 called for initially linking San Francisco and the Bay Area to Los Angeles to serve as *"the backbone"* of the statewide system and speculated that it could be in *"limited operation by 2008."* The bond funds were *"intended to encourage the federal government and private sector to make a significant contribution towards construction of the high-speed train network."* [43]

Two year later, now with Governor Schwarzenegger having replaced the recalled Gray Davis, but with still no commitments of federal or private funds to construct a high-speed rail project, SB1169 *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century* (Murray) was signed into law on June 24, 2004 pushing out the voter approval of rail bonds to November 7, 2006[44]. Two years later, and again with no commitments of federal or private funds, AB713 *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century* (Torrico) was signed into law on June 27, 2006 pushing out the voter approval of rail bonds to November 4, 2008[45].

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[41] Assembly Bill 1703 (Florez) *High-speed rail service*; Legislative Council's Digest, section (1), paragraph 2; Public Utilities Code Section 185020(h); Public Utilities Code Section 185032(a)(1). See: http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_1701-1750/ab_1703_bill_20000928_chaptered.pdf

[42] Senate Bill 796 (Costa) *High-Speed Rail Authority*; Public Utilities Code Section 185034(8)and (9). See:http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_0751-0800/sb_796_bill_20020919_chaptered.pdf

[43] Senate Bill 1856 (Costa), the *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century*; Section 1 paragraphs (b), (c), and (d). See: http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1851-1900/sb_1856_bill_20020919_chaptered.pdf

[44] Senate Bill 1169 (Murray) the *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century;* SEC 5 http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1151-1200/sb_1169_bill_20040624_chaptered.pdf

[45] Assembly Bill 713 the *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century;* SEC 4

Governor Schwarzenegger's Qualified Support for Rail Bonds

Costa's original bond measure of 2002, and the two subsequent measures extending the vote on the bonds, spoke very little about funding plan requirements as a precursor to the issuance of the bonds. In fact, the words "funding plan" or "financial plan" do not appear anywhere in these pieces of legislation. The requirements for a *"rail plan similar to California's former freeway plan" …with stable and predictable funding sources to implement the plan"* (still found in Section 185010(h) of the Public Utilities Code today) were written into the enabling legislation for the Commission and for the Authority, not the bond legislation of 2002, 2004, or 2006.

Governor Schwarzenegger's budget for 2008-2009, released in January 2008 called for: "Modifications to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, currently scheduled for the November 2008 ballot ($10 Billion) to ensure that appropriate financing is available to begin building the project."[46]

The requirements of the funding plan were further clarified in the Governor's 2008-2009 Budget Revisions, released in May 2008. The Revised Budget language included the following passages:

> "The administration will be proposing amendments to the *Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century* to ensure an appropriate balance between **assuring that expenditures of the bond funds will result in operational high-speed rail services** and providing the flexibility needed to attract federal and local government, as well as private sector, participation in funding, constructing, and operating the system. The following changes to the bond legislation are being proposed (Emphasis added).
>
> Limit the amount of bond funding that may be used for engineering work, environmental studies needed to obtain permits, and preservation of right-of-way to enable project costs to be more accurately determined and project risk to be reduced before other parties' funds are fully committed. This will help pave the way for public and private partners to participate in the project, while limiting the amount of bond funds at risk.
>
> **Before any construction or equipment purchase contracts can be signed for a portion of the system, there must be a complete funding plan that provides assurance that all funding needed to provide service on that portion of the system is secured.** (Emphasis added) [47]

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http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0701-0750/ab_713_bill_20060627_chaptered.pdf

[46] January 2008 Budget Highlights, Strategic Growth Plan section, page 29. See: http://www.dof.ca.gov/budget/historical/2008-09/governors/highlights/documents/HINF.pdf

[47] Governor's May Budget Revision 2008-09, Business Transportation and Housing section, pages 27-28. See: http://www.dof.ca.gov/budget/historical/2008-09/may_revision/documents/BS-BTH.pdf

Taken in context with reference to "operational high-speed rail services" the word "service" must be taken as a reference to operational high-speed rail service. Clearly the Governor's support for the high-speed train project was contingent on assurances that the Authority would have secured funds to complete a useable segment of the high-speed rail project before committing funds to begin construction or to purchase equipment.

Requirements of a Funding Plan and Other Tax Payer Protections – Assembly Bill 3034

In response the Governor's January 2008 request for modifications to the existing rail bond act "to ensure that appropriate financing is available to begin building the project", Assembly Member Cathleen Galgiani introduced AB3034, *Safe Reliable High-Speed Passenger Train Bond Act for the 21st Century*, on February 22, 2008. In what amounted to revisions of Costa's original 2002 bill, Galgiani's bill was amended as it progressed through the Assembly and then the Senate. Revisions dealing with construction of the high-speed train system and its funding are discussed in this section.

The Assembly's Revisions:

AB3034, as Introduced in Assembly February 22, 2008[48] (Authors/Coauthors/Sponsors – 4)

2704.04(c)– Deleted the requirement that a segment from San Francisco Transbay Terminal to Los Angeles Union Station (SF-LA) be *"fully funded"* before allowing bond funds to be spent on other segments and then revised other listed segments to incorporate pieces of the SF-LA segment.

2704.08(c) – Inserted requirement stating that *"in selecting each specific segment for construction and prior to awarding a construction contract, the authority shall have a detailed funding plan for that segment that identifies the full cost of constructing the segment and the sources of all revenues needed to complete construction of the segment*

2704.08(d) – Inserted a requirement that in prioritizing segments the Authority *"shall give priority to those segments that require the least amount of bond funds as a percentage of total cost of construction, shall consider the utility of that segment for other passenger rail services, and shall ensure that any other passenger service provided on that segment will not result in any operating or maintenance cost to the authority."*

The reference to a *"funding plan"* is made only once in Galgiani's original bill, but that is once more than in Costa's original bill. Also, the reference to prioritizing segments based on *"the*

[48] AB 3034, as Introduced in Assembly February 22, 2008. See: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080222_introduced.pdf

utility of that segment for other passenger rail services" may later have been cited by the Authority as justification for building an Initial Construction Segment that could be used by Amtrak. As will be discussed later in more detail, the Authority had previously adopted their May 2007 Phasing Plan outlining possible early use of some segments by Metrolink (LAUS to Palmdale) and potential cost sharing with both Metrolink and Caltrain. The Authority's Executive Director, Medhi Morshed, speaking of this possibility before the Assembly Select Committee on Rail Transportation on April 3, 2008, said:

> "We did a Phase 1 work which is out of the 800 miles where do we build first and the most promising place to build the Phase 1 would be between San Francisco and Anaheim. That's where you begin with close to about a $1 billion per year surplus. And within that over a ten year period we are going to build that in segments and we are going to look at segments that are going to get some initial benefits. And that looks like most likely it is going to be San Francisco to San Jose segment which we can actually make improvements in conjunction with the CalTrain people and they can begin to use the system while we are building it, a similar situation exists between Los Angeles and Anaheim, and probably Los Angeles and Palmdale" [49]

Amtrak usage of high-speed rail track is never brought up in either the May 2007 Phasing Plan or Director Morshed's remarks made before the Select Committee on Rail Transportation.

AB3034 as Amended in Assembly April 9, 2008[50] (Authors/Coauthors/Sponsors – 5)
Section 2704.04(b)(1) – Listed segments (A)-(F) now referred to as *"corridors"*. This is the first use of the word *"corridor"* with respect to high-speed rail.

Section 2704.04(b)(2) – Added *"financing obligations"* to operations and maintenance as costs that must be covered before using revenue to fund construction of the system. This seems to be a reference to using revenues to pay potential private investors in return for their up-front construction capital.

Section 2704.08(d) – Deleted *"each specific segment"* and replaced with *"segments"* as if envisioning that multiple segments could be constructed concurrently (i.e. when building from SF to LA). This interpretation is consistent with Executive Director Morshed's remarks of April 3, 2008.

[49] Assembly Select Committee on Rail Transportation, April 3, 2008, Disc 1 of 1 #08-0403C1. Director Morshed's remarks begin at 1 hour 32 minutes 30 seconds on disc.

[50] AB 3034, as Amended in Assembly April 9, 2008. See: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080409_amended_asm_v98.pdf

AB3034 as Amended in Assembly April 21, 2008[51](Authors/Coauthors/Sponsors – 9)
Section 2704.04(b)(2) – Inserted wording stating nothing in this section shall prejudice authority's selection of alignment from the Central Valley to the Bay Area in its certification of the EIR.

The Senate's Revisions:
In May 2008 when the Governor released his May Budget Revision, and with more clarity than in January, he called for "assuring that expenditures of the bond funds will result in operational high-speed rail services." This seems to have resulted in numerous and significant amendments to AB3034 as it progressed through the Senate.

AB3034 as Amended in Senate June 26, 2008[52](Authors/Coauthors/Sponsors – 36)
Section 185033 – Added to the Public Utilities Code to require the Authority's 2008 Business Plan to be submitted to Legislature not later than October 1, 2008. The contents of the plan to be submitted were clearly enumerated, including a requirement the Authority include *"an estimate and description of the total anticipated federal, state, local, and other funds the authority intends to access to fund the construction and operation of the system."*

Section 185035 – Added to Public Utilities Code requiring a Peer Group (duties and membership detailed) to evaluate the Authority's funding plan.

Section 2704.01 – Amended to include defined terms including: (f) *"Corridor"* and (g) *"Segment"*.

Section 2704.06 – Added wording to tighten control of the Legislature over release and use of bond proceeds.

Section 2704.08(a) – With regard to no more than one-half of construction costs to be derived from bonds, the word *"segment"* was deleted and the words *"corridor or usable segment thereof*" were added. This is the first use of the term *"usable segment"*. It would be used 23 more times in this amended version of AB3034.

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[51] AB 3034, as Amended in Assembly April 21, 2008. See: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080421_amended_asm_v97.pdf
[52] AB 3034 as Amended in Senate June 26, 2008. See: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080626_amended_sen_v96.pdf

Section 2704.08(c) – Added extensive wording strengthening the requirement of a *"funding plan"* and clearly delineating its requirements. This is one of five references in AB3034 to a *"funding plan"*.

Section 2704.08(d) – Added a new paragraph with extensive wording requiring a second *"funding plan"* and clearly delineating its requirements.

Section 2704.08(e) – Added a new paragraph with requirement Authority promptly inform Governor and the Legislature of material changes that would jeopardize completion of the corridor as previously planned.

Section 2704.08(f) – Added projected ridership and revenue and the need to test high-speed trains at 220 mph to the criteria for prioritizing the selection of corridors or usable segments for construction.

AB 3034 as also Amended in Senate as of July 7, 2008[53] (Authors and Coauthors -36)
185035(d) – Added to require the Authority to provide the Peer Review Group any and all information they might request.

Section 2704.01(g) – The defined term *"Segment"* is changed to *"Usable Segment"*. Definition is unchanged from previous definition. Only the word *"usable"* is added. This seems to indicate that when used previously, a *"segment"* was assumed to be *"usable"*. This change makes that assumption undeniable. After being redefined, this term is used twenty-five times in AB3034.

Section 2704.04(b)(1) – added language allowing bond expenditure for capital costs "*for the usable segment of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim. Once construction of the San Francisco-Los Angeles usable segment is fully funded, all remaining funds described in this subdivision shall be used for eligible capital costs, as described in subdivision (c)".*

Here, the amendment's author restored language that had been deleted from Costa's 2002 bill when Galgiani's AB3034 was introduced February 22. The text then continues with previously existing wording . . . *(c), for the following high-speed train system corridors:* [corridors are then listed] Wording is clumsy at best because the listed corridors include San Francisco to Los Angeles (broken into two pieces). Still, one could argue that *"used for eligible capital costs"* means *"used for eligible capital costs of listed corridors other than those already funded"*(i.e. San Francisco to Los Angeles)

[53] AB 3034 as Amended in Senate July 7, 2008. See:
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080707_amended_sen_v95.pdf

Section 2704.08(a) The words *"track and station costs"* used immediately before the words *"of each corridor or usable segment"* are deleted, which clarifies that not more than 50% of the total cost of construction of each a corridor or usable segment thereof was to derive from bond funds rather than simply referring to *"track and station costs."* This is an important change as the Authority seeks to build merely track and stations on the 130 mile long Initial Construction Segment in the Central Valley.

AB 3034 as Amended in Senate as of July 10, 2008[54] (Authors and Coauthors -38)
2704.04.(a) – Added words saying that approval of bond measure shows intent of Legislature and people of California to initiate construction of a high-speed train system "*that connects San Francisco Transbay Terminal to San Jose to Merced to Fresno to Bakersfield to Palmdale to Los Angeles, and to Anaheim…consistent with EIR's of Nov 2005 "and July 9, 2008".* Wording seems to indicate that SFTBT to LAUS/ANA was to be the first corridor built, not merely some short portion of it. This is consistent with 2008 Business Plan then due out October 1, 2008, and importantly it is consistent with wording of the May 2007 phasing decision made by the Authority.

2704.04.(b)(1) – Changed the words *"usable segment"* to *"corridor"* in reference to the high-speed train system connecting SFTBT to LAUS and Anaheim. Again, this seems to imply that this corridor was to be built as a singly funded project. Again, this is consistent with 2008 Business Plan that was due out October 1, 2008

2704.04.(b)(2) – Deleted requirement to *"fully fund"* SF to LA before funding other eligible capital costs found in 2704.04.(b)(1) and inserted new paragraph 2704.04.(b)(2) as follows: *Upon a finding by the authority that expenditure of bond proceeds in corridors other than the corridor described in paragraph (1) would advance the construction of the system and would* ***not have an adverse impact on the completion of Phase 1 of the high-speed train project, as adopted by the authority in May 2007*** (Emphasis added) *and described in paragraph (1), the authority may request funding for capital costs, and the Legislature may appropriate funds described in paragraph (1) in the annual Budget Act or separate statute, to be expended for the following high-speed train corridors:*

This is the first use of the term *"Phase 1"* and references it *"as adopted by the Authority in May 2007".* It was at their May 2007 Board Meeting that the Authority debated what to build first, and by a 5-2 vote, chose San Francisco to Los Angeles/Anaheim.

[54] AB 3034 as Amended in Senate July 10, 2008. See:
http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080710_amended_sen_v94.pdf

Relevant Background Information About the May 2007 Phasing Plan

The May 23, 2007 Board Meeting Minutes in a section entitled *"Project Phasing"* reveal the reasons for the Authority's choice of San Francisco to Los Angeles/Anaheim. Executive Director Morshed recommended this first phase selection because "**This segment"** (emphasis added) would be most likely to attract outside investment, have an operating surplus and it would be long enough to develop a train system that could travel at high speeds." [55] It is then referred to seven times in the minutes as a "starter segment."

Another important document listed on the Authority's website as part of the May 2007 Board Meeting Materials is a document entitled ***The California High-Speed Train Network*** *– Next Steps to Construction.* The link accessing this document is entitled *May 2007 Phasing Plan.* This seven-page document refers to Phase 1 as the "backbone" of the statewide network and describes how it must be built in stages coordinated to be completed at roughly the same time. For instance, work on Mountain Crossings "must also commence early" because of the complexity of the tasks and "are likely to be the last completed". In the Central Valley, "the construction, equipment, manufacturing, testing, and commissioning (of high-speed trains) will take considerable time and are in the critical path of the project. Therefore, work must start as soon as possible between Merced and Bakersfield." [56]

The term "critical path" is a common engineering term. When a large project is broken into smaller projects and the large project is essentially unusable until all smaller projects are completed, the smaller project requiring the most time to complete is referred to as being on the "critical path". Meeting Minutes record after lengthy discussion and some dissention (principally from Member Crane who was concerned over the lack of "financial commitments from different groups to have the financing for the project ready before construction begins" and Member Schenk who wanted Los Angeles to San Diego "included in the first phase of construction") Member Stapleton moved to approve the "project phasing recommendations" and the motion carried 5-2 with Crane and Schenk voting "no". It appears the "project phasing recommendations" being approved were those voiced by Morshed and written into the document entitled *The California High-Speed Train Network – Next Steps to Construction.*

[55] May 2007 Authority Board Meeting Notes, page 4, "Project Phasing" See: http://www.cahighspeedrail.ca.gov/assets/0/152/198/4cfc4b61-80b2-4175-b183-d5f37681fc71.pdf

[56] *The California High-Speed Train Network – Next Steps to Construction*; The link accessing this document is entitled *May 2007 Phasing Plan;* "backbone" reference on page 3; timing of construction of Mountain Crossing and Merced to Bakersfield references on page 6; "critical path" reference found on page 6. See: http://www.hsr.ca.gov/docs/brdmeetings/2007/brdmtg0507_phaseplan.pdf

In addition to the May 2007 Phasing Plan and Meeting Minutes, the May 2007 Meeting Materials contain links to a Financing Plan Report[57] and Financing Plan Presentation.[58] In all of these documents, there is never a reference to developing a Funding Plan or Business Plan for a sub-section of Phase 1. The Authority's documents speak of funding being an issue and certainly they would have liked to have been able to start with a smaller "starter segment", but anything smaller would evidently not have met Director Morshed's three criteria. Any reasonable person reading the May 2007 Meeting Minutes on Project Phasing, the phasing plan itself, the Financing Plan Report, and the Financing Plan Presentation can only conclude that the Authority envisioned the entire San Francisco to Los Angeles/Anaheim "starter segment" as a single project and was seeking to create a single funding plan for it.

Throughout 2007 and up until its publication on October 27, 2008, the Authority's financial consultant, Infrastructure Management Group, worked on a funding plan entitled *Financial Plan for the California High Speed Rail Authority- San Francisco to Anaheim Segment.*[59] Again, nowhere in this financial plan is there a discussion of funding the construction of anything short of the San Francisco to Los Angeles/Anaheim route, which in now commonly referred to as Phase 1 of the statewide high-speed train system.

Additional evidence showing the Authority's intent to build Phase 1 as one project with one funding plan is found in the 2008 Business Plan, which presented one financing plan for this phase and concluded with these words: "This Business Plan demonstrates how the system's backbone link (Los Angeles/Anaheim to San Francisco) can be financed." [60]

Therefore, when section 2704.04.(b)(2) was amended to include the words "*completion of Phase 1 of the high-speed train project, as adopted by the authority in May 2007*" the Authority was bound by statute to develop a funding plan for all of Phase 1 as a single project.

Section 2704.08(b)(1) – the word "*paragraph (1)*" of subdivision (b) of Section 2704.04 was deleted because now subdivision (b) contained two paragraphs and "*any eligible capital cost on each corridor, or usable segment thereof*" were described with both paragraphs together. This is important because the first paragraph now spoke of a "*corridor*" of a high-speed train system between SFTBT and LAUS/ANA and the second paragraph spoke of "*completion of that Phase*

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[57] *Preliminary Funding Strategy and Finance Plan: Bay Area to Anaheim Segments-Report.* Accessed from the Authority's website with a link entitled *May 2007 Financing Plan Report. See:* http://www.hsr.ca.gov/docs/brdmeetings/2007/brdmtg0507_financialrpt.pdf

[58] *Preliminary Funding Strategy and Finance Plan: Bay Area to Anaheim Segments–Presentation* . Accessed from the Authority's website with a link entitled *May 2007 Financing Plan Presentation. See* http://www.hsr.ca.gov/docs/brdmeetings/2007/brdmtg0507_financialplan.pdf

[59] IMG's Financial Plan for the California High-Speed Rail Authority San Francisco to Anaheim Segment, dated October 27, 2008. See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_SRC_FinPlan.pdf

[60] 2008 Business Plan, page 21, section entitled Finance Plan. See. http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_FullRpt.pdf

*1 of the high-speed train project, **as adopted by the authority in May 2007 and described in paragraph (1)**."*(Emphasis added) Once again, "*as adopted by the authority in May 2007*", San Francisco Transbay Terminal to Los Angeles Union Station/Anaheim was to be ONE project funded by ONE funding plan.

AB 3034 as Amended in Senate as of August 6, 2008[61] (Authors and Coauthors -38)
185033 of the Public Utilities Code was changed to move up the date of the 2008 Business Plan from October 1 to September 1. That plan was actually released November 7, four days after the ballot measure was voted on.

SEC. 4. Section 1 of Chapter 697 of the Statutes of 2002, as amended by Section 1 of Chapter 71 of the Statutes of 2004, was repealed and rewritten into SEC 8.

SEC. 5. Section 2 of Chapter 697 of the Statutes of 2002, as amended by Sections 1 and 2 of Chapter 44 of the Statutes of 2006, was repealed and rewritten in to SEC 9.

SEC. 6. Section 3 of Chapter 697 of the Statutes of 2002, as amended by Section 3 of Chapter 44 of the Statutes of 2006, repealed and was rewritten in to SEC 9.

SEC. 7. Section 4 of Chapter 697 of the Statutes of 2002, as amended by Section 4 of Chapter 44 of the Statutes of 2006, is repealed. This section mostly pertains to the ballot wording in the bond act and not the funding.

2704.04(a) and (b) – Amended to delete an important, but perhaps redundant passage:

…"*upon appropriation by the Legislature in the annual Budget Act or separate statute, shall be used for (A)planning the high-speed train system and (B) capital costs, described in subdivision (c), ~~for the usable segment corridor of the high-speed train system between San Francisco Transbay Terminal and Los Angeles Union Station and Anaheim"~~* This may have just been a cleanup of wording because paragraphs (c) does not specifically list as a single segment SFTBT to LAUS/ANA. Instead, it inserts a new paragraph (2) regarding the plan "*adopted by the authority in May 2007*", renames old paragraph (2) as (3) leaving wording identical except for now referencing paragraph (2) regarding the May decision rather than paragraph (1).

AB3034, as amended in the Senate August 6th appears to be very close, if not identical to the bill eventually approved and signed into law. The text of the August 6th version, taken from the

[61] AB 3034 as Amended in Senate August 6, 2008. See: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080806_amended_sen_v93.pdf

same government website as all other versions, no longer uses ~~strikeout~~ to show newly-deleted wording nor does this version single out new text with *italics*.

The Legislative Council's Digest pointing out recent amendments makes no mention of changes to sections 2704.04(a) and (b). However, the rewrite is extensive and, depending on a reader's viewpoint, the August 6th version may be interpreted as 'watering down' the July 10th version with regard to *"completion of Phase 1 of the high-speed train project, as adopted by the authority in May 2007."* Others might simply view the changes as a cleanup of wording and point to the fact that the Legislative Council's Digest makes no reference to these changes. Footnotes cited previously for both the July 10th and the August 6th amended version of AB3034 allow for a direct comparison.

2704.07 – This new section was added: *"The authority shall pursue and obtain other private and public funds, including, but not limited to, federal funds, funds from revenue bonds, and local funds, to augment the proceeds of this chapter."* Significant only to the extent that is was added to stress a point.

2704.08(f)(4) – Wording was added regarding corridor or usable segment selection to include: *"the extent to which the corridors include facilities contained therein to enhance the connectivity of the high-speed train network to other modes of transit, including, but not limited to, conventional rail (intercity rail, commuter rail, light rail, or other rail transit), bus, or air transit."* This seems in line with the Phasing Plan adopted in May 2007 where parts of the SF to LAUS/ANA that could have early utilization by Metrolink and Caltrain might be given priority.

Executive Director Morshed's Description of the Authority's Actual Funding Plan
At the time a requirement for a funding plan was being written into AB3034, Mehdi Morshed, Executive Director of the Authority, gave voice to the Authority's actual funding plan in testimony made April 3, 2008 at a hearing before the Assembly Select Committee on Rail Transportation. Quoting from the hearing recording:

"We anticipate that the phase 1 of the high speed train system, once it is constructed, after 2-3 years of operation, we'll begin generating over a billion dollars a year in revenue surplus. And that revenue surplus is being used as a way of basically developing a financing for the project. We have a financing plan for the project that Phase 1 is estimated to cost about 30 billion dollars. We're assuming about 9 billion dollars from the state. We assume about a similar amount from the federal government. And the last third of the cost is going to be covered by the private sector utilizing the surplus revenues and the other benefits that the private sector would get from a high-speed train. So that's how the financing of the project is and you know that's going to we anticipate moving forward."

Executive Director Medhi Morshed, April 3, 2008[62]

[62] Assembly Select Committee on Rail Transportation, April 3, 2008, Disc 1 of 1 #08-0403C1
Morshed remarks begin at 1 hour 30 minutes 54 seconds on disc.

Morshed's thoughts found their way into the 2008 Business Plan with a similar level of assurance that they would materialize; none at all. Nearly six years later "none at all" is exactly the amount of private funds secured by the Authority and "none at all" is the amount of federal funds they have been told by Congress to expect in the future.

Part IV
Soaring Costs Magnify the Inadequacies of the Authority's Funding Plan

The 2008 Business Plan

AB3034 mandated that *"the authority shall prepare, publish, and submit to the Legislature, not later than September 1, 2008, "a revised business plan"* that was to contain *"an estimate and description of the total anticipated federal, state, local, and other funds the Authority intends to access to fund the construction and operation of the system."* [63] The plan was finally published on November 7, 2008. [64] This was two months later than statutorily required and after passage of Proposition 1A (enacting statutes of AB3034). It showed all $9 billion in state high-speed rail bonds along with "targeting" $24 billion in federal, private and local sources to fund the $33 billion capital cost of Phase 1.[65] $12-$16 billion of federal funding was explicitly shown.[66] This was done despite the Authority's policy going back to 1999, stating that "federal grant funding shall not be included in the Authority's financial plan until a funding commitment is expressed by either the Congress or the administration." [See FN34]

Another questionable practice was combining the $9 billion in bonds, which should have been considered "year-of expenditure dollars", with costs expressed in 2008 dollars. This deception was corrected one year later when the Authority in its December 2009 Report to the Legislature expressed capital costs in "year-of-expenditure dollars" as demanded by both the Department of Transportation and the Legislature. The result was an updated cost of $42.6 billion in YOE dollars, still with only $9 billion in state bonds.[67]

Where once the Authority had speculated that Californians would need to invest, perhaps only about a third of the total project cost [See FN38] and the Authority had been committed to a policy of not including federal grant funding in a financial plan "until a funding commitment is expressed by either the Congress or the administration," [See FN 34] the Authority now projected that Californians would need to invest only about a fifth of the total project cost and was showing $17-$19 billion in federal funding[68]; none of which was at the time a commitment expressed by either the Congress or the Administration.

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[63] AB 3034 adding Section 185033 to the Public Utilities Code. See: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_3001-3050/ab_3034_bill_20080826_chaptered.pdf
[64] The Cover Letter accompanying the 2008 Business Plan was undated. See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_CoverLtr.pdf. The cover Letter for 2008 Business Plan link The news release announcing the plan was dated November 7, 2008. See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_NewsRelease.pdf. The link to the News Release.
[65] 2008 Business Plan, Finance Plan section, page 21. See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_FullRpt.pdf
[66] 2008 Business Plan, Finance Plan section, Figure 26, page 21
[67] December 2009 Report to the Legislature, Cost of the System, Cost Summary, page 84. See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2009_Legis_FullRpt.pdf
[68] December 2009 Report to the Legislature, Paying for the System, Financial Plan Overview, page 92

The Draft and Revised 2012 Business Plans

The capital cost situation and prospects for funding would only worsen for the Authority. By November 2011, the capital costs in the Draft 2012 Plan for the San Francisco to Los Angeles/Anaheim phase had ballooned to between $98.5 and $117.6 billion in year-of-expenditure dollars.[69] Costs for the extensions to Sacramento and San Diego went unreported in that Draft 2012 Business Plan. Some $3.3 billion of one-time, ARRA funding ("stimulus funds") was now committed by the federal government. But the Revised 2012 Business Plan, released in April 2014, called for much more. Consistent with previous plans, the Authority provided ranges of costs dependent upon the alignment chosen. The eventual alignment chosen is dictated by the environmental permitting process and this process was incomplete in April 2012, as it still is in March 2014. The Authority deals with the problem of a high cost alignment by glossing over the high-end cost estimates and elaborating only on the low-end cost possibility.

The Revised 2012 Business Plan went one step further and elaborated only on the low-end cost ("planning cost scenario") of a scaled-down Phase 1 where high-speed trains would share track with Caltrain in the Bay Area and Metrolink trains in the Los Angeles Basin. The Authority called this project "Phase 1 Blended". Phase 1 Blended was estimated to cost $68.4 billion in YOE dollars, of which $41.7 billion would come from yet-unsecured "federal support" and $13.1 billion would come from the private sector. With only $3.3 billion shown as secured federal support and no committed private investment the total funding gap was $51.5 billion.[70]

The planning cost scenario rises to $91.4 billion and funding gap rises to $74.5 billion if the Full Build of Phase 1 turns out to be necessary to create a system in compliance with other provisions of AB3034 (i.e. travel times, minimum headway, etc.).[71] The April 2012 Plan provides no figure comparable to the $91.4 billion figure for the possible high-end cost of this project. However, the plan does provide a high-end cost number comparable to the $68.4 billion number for the planning case scenario of Phase 1 Blended, $79.8 billion.[72] Scaling $91.4 billion by the ratio of $79.8/$68.4 yields an estimated high-end cost for the Full Build of Phase 1 of $106.6 billion and the Authority's funding gap grows to $89.7 billion.

The Authority solved some of the April 2012 plan's funding shortfall by declaring they would build a profitable Initial Operating Segment (IOS) from Merced to San Fernando in spite of

[69] Draft 2012 Business Plan, released November 2011, Chapter 8 Funding and Financing, page 8-2. See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2012Draft_web.pdf

[70] Revised 2012 Business Plan, sum of figures found in Exhibits 7-*15 Total sources and uses for IOS to Bay to Basin assuming private-sector investment in 2023* (2013 to 2026) (YOE dollars in millions) and 7-17. *Sources and uses—Phase 1 Blended with private-sector capital* (YOE dollars in millions) See: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2012_rpt.pdf

[71] Revised 2012 Business Plan, Executive Summary, page ES-14

[72] Revised 2012 Business Plan, Exhibit 7-20. *Total sources and uses of funds—increased construction costs* (YOE dollars in millions)

having at least a $20.3 billion federal funding shortfall for this work.[73] The April 2012 plan pushed off the larger funding shortfall into the future.

Before reviewing the Authority's inadequate funding plan for the IOS, it is worth reviewing how the project and its funding plan have evolved since the inception of the Intercity High-Speed Rail Commission twenty-one years ago.

- Twenty-one years have passed since the Commission was charged with preparing "a 20-year high-speed intercity ground transportation plan". [See FN2]
- The plan first envisioned connected Los Angeles to San Francisco at a cost of between $12.1 and $16.5 billion (1996 dollars) along a route stretching a distance of between 398 and 448 miles depending on alignment.[74] It was to be in revenue service by fiscal year 2005/6.[75] By April 2012, that vision had translated into a $91.4 to $106.6 billion project, 520 miles in length to be completed in 2033.[76]
- The Authority currently makes no cost or completion date estimates for the extensions linking high-speed rail to Sacramento and San Diego.[77] A reasonable guess made by scaling cost and years of construction time by 800/520 (the length of the statewide system/the length of Phase 1) yields a cost estimate of up to $164 billion and a completion date of 2044; nearly 40 years after Statewide Program EIR was certified.
- The legislative mandate to the Commission and later to the Authority to develop a *"high-speed intercity rail plan similar to California's former freeway plan and designate an entity with a stable and predictable funding source to implement the plan*" has evolved from dedicated inflation indexed voter-approved taxes that only voters could later decide to repeal into a plan that hopes for (1) massive federal grants from non-existent federal transportation programs,(2) massive private participation when not one penny of private money has been forthcoming in the last twenty-one years, and (3) billions of dollars in local government participation in an era when many of California's cities teeter on the edge of bankruptcy.

Against this backdrop, the Authority's April 2012 plan proposed a funding plan for their IOS connecting Merced to San Fernando that includes $7.1 billion of the $8.2 billion in remaining unspent rail bonds.[78] The estimated cost for the IOS ranges from $26.9 billion to $31.3 billion

[73] Revised 2012 Business Plan, Exhibit 7-10. *Sources and uses for completing the IOS* (YOE dollars in millions)
[74] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Capital Cost Summary Table 3.3, page 3-25
[75] *High Speed Rail Summary Report and Action Plan*, Published by Intercity High-Speed Rail Commission December 13, 1996, Project Revenue Financing, page 5-9
[76] Revised 2012 Business Plan, Exhibit ES-3. Summary of each phased implementation section, page ES-13
[77] Revised 2012 Business Plan, Exhibit 2-6. Projected milestones for completing the environmental review process/potential construction completion, page 2-28
[78] Revised 2012 Business Plan, sum of state bond funds shown in Exhibit 7-9 IOS-First Construction funding sources (YOE dollars in millions) and Exhibit 7-10 Sources and uses for completing the IOS (YOE dollars in millions)

expressed in 2011 dollars.[79] The plan later details the low end (planning cost scenario) of this cost range expressed in year-of-expenditure dollars and arrives at a figure of $31.3 billion.[80] The plan does not detail the cost to construct the IOS in year-of-expenditure dollars for the high cost estimate. However, if the low cost estimate expressed in YOE dollars is multiplied by the ratio of $31.3/$26.9, the high cost is estimated to be $36.4 billion in YOE dollars. The Authority's funding plan should cover the high number, $36.4 billion, and not merely the low number of $31.3 billion if taxpayers are to be reasonably assured that the Authority will be able to complete the IOS.

The April 2012 plan notes the following committed funding sources for the IOS:

Federal Grants Secured	$3.3 billion
State Bonds (Prop. 1A)	$2.7 billion
	$6.0 billion

This leaves a shortfall of $30.4 billion if the funding plan is to support the high end of the range of current cost estimates. Interestingly, the Authority's current funding plan calls for:

Federal support	$20.3 billion
State Bonds (Prop. 1A)	$4.4 billion
Other Funds	$.7 billion
	$25.4 billion

When combined with the $6 billion in committed funds, these sources exactly match the funds needed for the low cost scenario, but not enough to support the high cost scenario. In other words, even when the Authority simply makes up numbers, they do not make the numbers high enough to ensure the IOS could actually be built. Moreover, because the $20.3 billion in federal support is merely a wish on the Authority's part, not supported by any existing federal programs or commitments, this funding plan was found to be out of compliance with the requirements of Proposition 1A.[81]

[79] Revised 2012 Business Plan, Exhibit 3-3 Cost to Construct IOS- Central Valley to San Fernando Valley (base year fiscal year 2011 dollars), page 3-8
[80] Revised 2012 Business Plan, sum of figures tallied in Exhibits 7-9 (IOS First Construction Funding Sources) and 7-10 (Sources and Uses for Completing the IOS)
[81] On August 16, 2013, Sacramento Superior Court Judge Michael Kenny in the case Tos, Fukuda, and the County of Kings versus California High-Speed Rail Authority Et al. ruled in favor of the Plaintiffs

The Authority's Tiny Fig Leaf – Cap and Trade Funds

The Authority seeks to fill the funding gap for the IOS with the promise of Cap and Trade funds. Since "federal support" and "other funds" are as yet uncommitted by any party, the funding gap to be filled by Cap and Trade funds throughout the remaining construction period (2014-2021) is stunningly large.

Required Committed Funds (high end of cost range)	$36.4 billion
Federal Grants Secured	- $3.3 billion
State Bonds (Prop. 1A)	- $7.1 billion
Funding Gap	$26.0 billion

Into this gap, Governor Brown supports the allocation of $.250 billion in Cap and Trade funds in this year's state budget to build the IOS when the funding gap averages $3.25 billion/year each year over the Authority's estimated eight-year construction period. On the face of it, this one-year allocation can be dismissed because it covers less than 8% of the first year's funding gap. Moreover, even if this allocation were to be approved by the legislature in FY14, there is no guarantee that other Cap and Trade funds will be available and/or allocated in future years.

It is worth comparing the current Cap and Trade funding scheme to the requirements for a base funding source once laid out by the Commission in 1996: [FN 22]

"In order to qualify as a base funding source, the source must:

> be able to substantially finance the construction of the system;
> secure debt against the revenue source;
> provide funding irrespective of the construction status or operational readiness of the system; and
> have stable and reliable revenue growth potential."

With regard to first criteria, "be able to substantially finance the construction of the system", the $.250 billion in Cap and Trade funds source fails because it amounts to less than 1% of the total funding gap of the IOS.

With regard to the second criteria, "secure debt against the revenue source" the Cap and Trade fund source fails because a one-time assured revenue cannot be used to secure debt.

With regard to the third criteria, "provide funding irrespective of the construction status or operational readiness of the system," environmentalists will surely argue that Cap and Trade funds are required to go towards projects that reduce greenhouse gas emissions within the state by the year 2020. As the IOS will not even be in operation until 2022, and will result in substantial and irreversible emissions during its eight-year construction period, Cap and Trade funds also fail this criteria.

Lastly, with regard to the fourth criteria, little is known about the stability, reliability, or growth potential of Cap and Trade funds. However, plaintiffs are currently in court arguing that Cap and Trade fees amount to a tax, and that California's Global Warming Act (AB32) authorizing these mandatory fees was passed without the necessary two-thirds majority called for by Proposition 13 causing this test to also fail.

The Draft 2014 Business Plan – The recently released Draft 2014 Business Plan does not address the funding shortfalls associated with IOS construction or later development of the system (i.e. Bay to Basin, Phase 1 Blended, or Phase 1). The cost of the project is largely unchanged as are the committed sources of funding.[82] However, previous plans have shown a range of costs, a low-end or "planning cost scenario" and a high-end cost, dependent on the eventual alignment that is chosen. The Draft 2014 Plan eliminates all discussion of high-end costs even though the plan clearly points out that the project level environmental work needed to select a final alignment is incomplete for all but the Merced to Fresno section. [83]

In another attempt to disguise true costs, the "Phase 1 Full Build" option, mentioned twenty times in the April 2012 plan and estimated to cost $23 billion more than the Phase 1 Blended option, is not mentioned once in the Draft 2014 plan. The term "Phase 1 Blended" used in the previous April 2012 plan is replaced with the term "Phase 1" in all but four references in the draft 2014 plan. This oversight (that it was left in at all) may be attributed to the fact that the plan is a "draft" and will probably be corrected in the final 2014 plan to remove all traces of "Phase 1 Blended" in an effort to lull the reader into forgetting that Phase 1 is now a degraded Phase 1 compared to previous plans.

The Authority is faced with an intractable funding problem of their own making. They created the problem in December of 1999 when they swung toward favoring a "phased-funding approach" instead of asking the citizens of California to approve a temporary sales tax to create a stable and predictable funding source to implement their plan**.** Instead, the Authority made a 'bad bet' that the federal government would develop a program to fund high-speed rail projects as they had once funded the construction of the Interstate Highway System; a federal excise tax on gasoline paid by motorists in each state and sent back to the states to fund interstate highway projects. No such federal high speed-rail financing program has been created in the nearly fifteen years that the Authority has been waiting for it and no such program is included in the recently passed 2014 federal budget. None is even contemplated.

[82] Draft 2014 Business Plan, *EXHIBIT 3.5 YEAR-OF-EXPENDITURE COST ESTIMATES*: See: http://www.hsr.ca.gov/docs/about/business_plans/FINAL_Draft_2014_Business_Plan.pdf
[83] Draft 2014 Business Plan, Exhibit 1.2 – Completed and Projected Milestones for the Environmental Review Process by Project Section, page 26

Part V
The Authority's Funding Plan Mandate Regarding Environmental Work

Environmental Clearances Required in the Funding Plan Mandates of AB3034
The passage of Assembly Bill 3034 rewrote section 2704.08.(c) of the Streets and Highway code to read:

"No later than 90 days prior to the submittal to the Legislature and the Governor of the initial request for appropriation of proceeds of bonds authorized by this chapter for any eligible capital costs on each corridor, or usable segment thereof, identified in subdivision (b) of Section 2704.04, other than costs described in subdivision (g), the authority shall have approved and submitted to the Director of Finance, the peer review group established pursuant to Section 185035 of the Public Utilities Code, and the policy committees with jurisdiction over transportation matters and the fiscal committees in both houses of the Legislature, a detailed funding plan for that corridor or a usable segment thereof. (2) The plan shall include, identify, or certify to all of the following:[List of Items A through K follows]*"*

Item (K), the last of the referenced items, reads as follows:

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

When making its initial request for appropriation of proceeds of bonds in 2012 and seeking to begin construction of the Initial Operating Segment running from Merced to San Fernando, the Authority's plan was clearly out of compliance with this requirement and a court has so ruled. [FN81]

The Authority has treated this as a mere technicality and now touts the fact that it has achieved environmental clearance for the Merced to Fresno section where it seeks to begin IOS construction. However, for good reasons, its funding plan to begin building the IOS from Merced to San Fernando is required by statute to certify that the Authority has completed all environmental clearances for the 300-mile IOS. This would include clearances for the segments from Fresno to Bakersfield, Bakersfield to Palmdale, and Palmdale to Los Angeles. The Authority's Draft 2014 Business Plan admits it still does not have these clearances and projects they will not have all of them until the summer of 2015.[84] The Authority and the public will not have reasonable assurances that completing the IOS is even feasible until all environmental clearances are complete.

[84] Draft 2014 Business Plan, Exhibit 1.2 – Completed and Projected Milestones for the Environmental Review Process by Project Section, page 26

In addition to passing the test of feasibility, the required environmental work includes completing engineering work up to the 15% level and choosing a final alignment through each section. Both of these completed tasks make it possible to more reasonably estimate costs and the required funds to complete the project.

Quoting from the Certified EIR for the Merced to Fresno section:

After completion of the Statewide Program Level EIR, "The next step in the HST development process includes additional engineering and design and preparation of project EIR/EISs for all HST project sections. This Merced to Fresno Section Project EIR/EIS (Tier 2) evaluates proposed alignments and stations in site-specific detail to provide a complete assessment of the direct, indirect, and cumulative effects of the proposed action, considers public and agency participation in the scoping process, and was developed in consultation with resource and regulatory agencies, including EPA and USACE. FRA and the Authority intend this document to be sufficient to support Section 404 permit decisions and Section 408 permit decisions (as applicable) for alteration/modification of completed federal flood risk management facilities and any associated operation and maintenance, and real estate permissions or instruments (as applicable). Both the EPA and USACE issued letters identifying the Hybrid Alternative as the preliminary LEDPA (March 23, 2012, and March 26, 2012, respectively)"[85]

Statute dictates that ALL environmental clearances be in place as part of the funding plan before the Authority may ask the Legislature for an appropriation of bond funds. Were it not for the law, common sense would dictate this requirement to simply assure Californians the Authority could reasonably expect to build from point A to point B with a reasonable estimate of costs before committing funds for final engineering work and construction.

The Statewide Program EIR/EIS

The Statewide Program EIR/EIS (Statewide EIR) certified in 2005 looked at the a high-speed train system linking all of California's major metropolitan areas (the Bay Area, Sacramento, the Los Angeles Basin, and San Diego) and compared the environmental costs ("impacts") and benefits of the statewide system to a No Project Alternative and a Modal Alternative.[86] Pertinent excepts from the Statewide EIR are quoted below describing the No Project, Modal, and High-Speed Train Alternatives.

The No Project Alternative

"For the No Project Alternative, both existing and future conditions (2020) are considered. The No Project Alternative represents the state's transportation system (highway, air, and conventional rail) as it existed in 1999–2000 and as it would be in 2020 with the addition of transportation projects currently programmed for implementation (already in funded

[85] California High-Speed Train Project EIR/EIS – Merced to Fresno Section, page 1-2. See: http://www.hsr.ca.gov/docs/programs/merced-fresno-eir/final_EIR_MerFres_1Purpose.pdf

[86] Statewide Program EIR/EIS, Summary, Alternatives Including High-Speed Train, page S-3. See:http://www.hsr.ca.gov/docs/programs/eir-eis/statewide_final_EIR_vol1summary.pdf

programs/financially constrained plans) according to the State Transportation Improvement Program (STIP), regional transportation plans (RTPs) for all modes of travel, airport improvement plans, and intercity passenger rail plans. The No Project Alternative addresses the geographic area serving the same intercity travel market as the proposed HST Alternative (generally, from Sacramento and the San Francisco Bay Area, through the Central Valley, to Los Angeles and San Diego)."

The Modal Alternative

"The Modal Alternative is described as a set of hypothetical improvements representing a possible response to projected intercity travel demand that will not be met by the No Project Alternative. The improvements described for each Modal Alternative component are capacity oriented (e.g., additional traffic lanes for highways with associated interchange reconfiguration and ramp improvements; additional gates and runways for airports). Overall, the highway improvements assumed under the Modal Alternative represent a total of over 2,970 additional lane miles (mi) (4,780 lane kilometers [km]). Two additional highway lanes would be required on most intercity highways, and as many as four additional lanes would be needed to meet forecasted demand in certain segments. Projected airport improvements would include over 90 new gates and five new runways statewide."

The High-Speed Train Alternative

"State-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology is being considered for a proposed system that would serve the major metropolitan centers of California, extending from the San Francisco Bay Area and Sacramento, through the Central Valley, to Los Angeles and San Diego. State-of-the-art safety, signaling, and automated train-control systems would be used. By 2020, the proposed service would include approximately 86 weekday trains in each direction to serve the study area intercity travel market, with 64 of the trains running between northern and southern California and the remaining 22 trains serving shorter distance markets. Most passenger service is assumed to run between 6:00 a.m. and 8:00 p.m. The proposed system would be capable of speeds in excess of 200 mph (322 kph), and the projected travel times would be designed to compete with air and auto travel. For example, the projected travel time by HST between San Francisco and Los Angeles would be just under 2 hrs and 30 min, and between Los Angeles and San Diego it would be just over one hour. The route representing the highest return on investment from the Authority's Business Plan is used to represent the HST Alternative for general comparison and evaluation with the other system alternatives. This representative system was forecast to carry between 42 and 68 million passengers in 2020, with the potential to accommodate higher ridership by adding trains or using longer trains. For a conservative assessment of potential environmental impacts, the higher ridership forecast is used in describing the proposed HST Alternative and its impacts, and is referred to in the Program EIR/EIS as the "representative demand" ridership. However, for resource topics where the high-end ridership forecasts would result in potential benefits (e.g., energy, air quality, and travel conditions), additional analysis is included to address the impacts associated with the low-end forecasts….

….The cost to implement the representative HST train system, which reflects a similar network of alignment and station options to that presented in the Authority's Business Plan, is estimated to range between $33 billion and $37 billion (2003 dollars), depending on the alignment and station options selected. The cost estimate includes right-of-way, track, guideway, tunneling, stations, and mitigation."

The three alternatives were then evaluated and compared regarding their key environmental impacts and benefits. The statewide high-speed train network was then chosen as the preferred alternative. A table was presented showing its benefits and impacts, including:[87]

HST Benefits
Congestion reduction on intercity highways
Reduction in time of travel
Decrease in injuries and fatalities on highways
Overall savings in passenger costs
Air quality benefit
Energy benefit

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HST Environmental Impacts
Moderate to high visual impacts especially in scenic open space
High impact on noise
Right of Way needs impacting 2,445-3860 acres of farmland
Adverse impact on 1201-1568 acres of sensitive habitat, wetlands and special status species
Adverse impact on floodplains, streams, and lakes
Potential impacts on 1-6 wildlife refuges
Medium to high ranking for potential impacts on archaeological resources and historical properties
Impacts on farmlands

The Statewide high-speed train alternative won-out over the other alternatives, but that is NOT what the Authority seeks to build and not even one usable segment of the statewide system is currently scheduled to be completed by 2020; the year used in the Statewide EIR for comparing the three alternatives. There are synergies that come with building the whole statewide system. For instance, the route between Los Angeles and Sacramento mostly uses track that also runs between Los Angeles and San Francisco. Extending the system to Sacramento substantially increases environmental benefits while the increase in environmental impacts is minimal. Likewise, connecting Los Angeles to San Diego also connects travelers from Sacramento or San Francisco with San Diego. It is synergies like these that caused ridership estimates to double when extensions were added to Sacramento and San Diego according to studies done by the

[87] Statewide Program EIR/EIS, Table S.6-1Summary of Key Environmental Impacts and Benefits for System Alternatives, pages S-11 to S-16

Intercity High-Speed Rail Commission.[84] Similar results are detailed in a Ridership and Revenue study conducted for the Authority as part of their 2008 Business Plan.[88] In fact, the Commission's final report showed the project only having a net positive economic benefit to Californians if the extensions to Sacramento and San Diego were built.[89] The same synergies exist today.

The central problem with the Authority's incremental approach to funding and construction of the system is that benefits accrue mostly with completion of the entire system while environmental costs, as well as construction costs, accrue approximately proportional to miles of track constructed. For this reason, it is impossible to believe that a Merced to Fresno or even a Merced to San Fernando project could obtain an environmental clearance on its own. Merced to Fresno and the other segments encompassing the IOS can only achieve clearance as part of the statewide system that was compared to the "No Project Alternative" and the "Modal Alternative". Californians have no assurance that the statewide system, or even Phase 1 linking San Francisco to Los Angeles, will ever be built because the Authority has never acquired the tens or hundreds of billions of dollars necessary for their construction. Californians living in the Central Valley face an environmental catastrophe with no assurance of any benefits associated with high-speed train travel.

Years of delay and a lack of high-speed rail funds have left Californians facing an alternative worse than anything envisioned in the Statewide EIR if the Authority is allowed to start accessing bond funds to build in the Central Valley. The "No Project Alternative" will be realized when 2020 arrives, billions of dollars will have been spent destroying lives and property in the Central Valley, and the benefits of traveling by high-speed trains will not have been experienced by any Californians.

Mark R. Powell
March 2014

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[88] CALIFORNIA HIGH-SPEED TRAIN PROJECT RIDERSHIP AND REVENUE FORECASTS, RIDERS AND REVENUE FOR HIGH-SPEED TRAIN FULL SYSTEM, YEAR 2030, page 11.
See:http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_SRC_RiderRevenue.pdf

[89] High Speed Rail Summary Report and Action Plan, Published by Intercity High-Speed Rail Commission December 13, 1996, Table 7.8 Total Discounted Costs and Economic Benefits (Year 2000-2050)