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A REVIEW OF THE CHALLENGES FACING CALIFORNIA HIGH-SPEED RAIL

(113–49)

HEARING

BEFORE THE

SUBCOMMITTEE ON
RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JANUARY 15, 2014

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[2] William C. Grindley submitted for the record the reports by the team listed above which document their review and analysis of the financial risks of the planned California high-speed rail project. The reports are available online at http://www.sites.google.com/site/hsrcaliffr.

Committee on Transportation and Infrastructure
U.S. House of Representatives

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January 10, 2014

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM:	Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE:	Subcommittee Hearing on "A Review of the Challenges Facing California High Speed Rail"

PURPOSE

On Wednesday, January 15, 2014, at 10:00 a.m. in Room 2167 Rayburn House Office Building, the Subcommittee on Railroads, Pipelines, and Hazardous Materials will receive testimony regarding the status of the California High Speed Rail Project (project). The project is the largest in the High Speed Intercity Passenger Rail (HSIPR) program administered by the Federal Railroad Administration (FRA). Recent state court actions have raised new concerns regarding availability of funding to complete the project.

BACKGROUND

In General

In 1996, the California High Speed Rail Authority (CHSRA) was created as an independent state entity charged with designing a high-speed train system for the state. CHSRA first introduced a plan in 2000 for a system that would link all of California's major population centers, including the San Francisco Bay Area, Los Angeles, and San Diego. The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, AB 3034, provided for the issuance of $9.95 billion in general obligation bonds for passenger rail in the state. Though removed from the ballot twice, the bond measure (Proposition 1A) went to the voters on November 4, 2008, and was approved with 52.7 percent of the vote.[1]

[1] Under California law, any bill that calls for the issuance of general obligation bonds must be adopted by each house of the state Legislature by a two-thirds vote, signed by the Governor, and approved by a majority of voters.

Proposition 1A

Finances: Proposition 1A authorized the state to sell $9.95 billion in general obligation bonds, $9 billion for the high-speed rail project and $950 million for investments in regional, commuter, and intercity rail. The bonds would be available when appropriated by the Legislature. However, the bond funds can only be used for one-half of the total cost of construction of each corridor or segment of a corridor. Proposition 1A requires CHSRA to seek private and other public funds to cover the remaining costs and also limits the amount of bond funds that can be used to fund certain pre-construction and administrative activities. CHSRA applied for and was awarded public funds from the FRA's HSIPR grant program, as discussed further below.

Accountability and Oversight Process: Proposition 1A also required accountability and oversight of the authority's use of bond funds. In general, the bond funds must be appropriated by the Legislature and approved by the Governor. Prior to doing so, however, Proposition 1A established the Peer Review Group with members that are experts on high-speed rail, financial services, and environmental planning to review the project and its funding plan. Proposition 1A also establishes the High-Speed Passenger Train Finance Committee (Finance Committee) consisting of the Treasurer, Director of Finance, the Controller, the Secretary of Business, Transportation and Housing, and the Chairperson of the Authority, which authorizes issuance of the bonds once the Legislature appropriates the funds.

Ninety days prior to requesting the Legislature appropriate proceeds from bond funds for any capital cost on a corridor or a "usable segment" thereof, CHSRA is required to approve and submit to the Director of Finance, the Peer Review Group, and the requisite legislative committees "a detailed funding plan for that corridor or useable segment thereof."[2] The funding plan is required to "include, identify, or certify to" a list of eleven specific items, including "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" and that "the [CHSRA] has completed all necessary project level environmental clearances necessary to proceed to construction."[3]

The funding plan is intended to help the Legislature and Governor make the decision on whether to approve appropriation of the bond funds for expenditure on the project. Once appropriated, and upon request of the CHSRA, the Finance Committee, under California law, must "determine the necessity and desirability of … issuing any bonds to be authorized" for the project.[4]

Funding Plan

CHSRA approved the funding plan required under Proposition 1A on November 3, 2011, identifying one of two alternative segments as the "corridor, or usable segment thereof": (1) the initial operating segment-north from San Jose to Bakersfield (IOS North) or (2) initial operating

[2] Calif. Streets and Highways Code § 2704.08(c)(1).
[3] Calif. Streets and Highways Code § 2704.08(c)(2)(D) and (K).
[4] Calif. Gov't Code § 16730.

segment-south from Merced to San Fernando (IOS South).[5] Both the IOS North and IOS South included the CHSRA's initial construction segment from north of Fresno to north of Bakersfield, approximately 130 miles (ICS). Notably the funding plan stated that "all necessary funding sources for the ICS have been identified" and further discussed potential funding sources for completion of the IOS North or IOS South, but committed funding was not yet identified.[6]

The funding plan also explained that "[i]n connection with the [ICS], the Authority will have, prior to expending Bond Act proceeds requested in connection with [the] Funding Plan, completed all necessary project level environmental clearances necessary to proceed to construction" and continued to set forth the status of the then-ongoing environmental reviews pertaining to the ICS.[7] Subsequently after approval of the funding plan, CHSRA submitted it to the requisite governmental entities and, on July 18, 2012, the Legislature appropriated the bond funds for construction of the ICS from north of Fresno to north of Bakersfield.

State Court Challenges

Several pieces of litigation have arisen regarding the state funding portion of the project. In one case, several land owners and the County of Kings challenged the CHRSA's approval of its detailed funding plan required under Proposition 1A. Specifically, the plaintiffs claimed, in part, that the funding plan violated the requirements of Proposition 1A that the funding plan include, identify, or certify (1) the "sources of all funds to be invested in the corridor, or a useable segment thereof" and (2) the certification that CHSRA had completed all necessary project level clearances necessary to proceed with the construction.[8]

On August 16, 2013, the Superior Court of California, County of Sacramento, found in favor of the plaintiffs stating the CHSRA "abused its discretion by approving a funding plan that did not comply with the requirements of the law".[9] Specifically, the court noted that "[w]hile the approved funding plan adequately addressed the availability of funds for construction of the ICS, it did not do so for the entire [initial operating segment (IOS)]" as required by Proposition 1A.[10] Similarly, the court noted the funding plan "does not address project level environmental clearances for the entire IOS at all, but only addresses the ICS .... The funding plan explicitly states that project level clearances have not yet been completed even for the ICS."[11]

The court also requested further briefing on the issue of remedies given its findings. On November 25, 2013, the court directed the CHSRA to rescind its approval of the funding plan based on the court's ruling on August 16, 2013. In so doing, the court explained that a detailed funding plan that complies with Proposition 1A is a "necessary prerequisite" for the preparation of a second detailed funding plan under subsection (d) of the statute, which is a prerequisite to the expenditure of state bond funds for construction, real property acquisition, and equipment

[5] California High-Speed Rail Authority, Funding Plan, 2-3, Nov. 3, 2011.
[6] *Id.* at 7.
[7] *Id.* at 14.
[8] *Tos, et al. v. Calif. High Speed Rail Auth., et al.*, Case No. 34-2011-00113919-CU-MC-GDS, p. 2-4 (Sup. Ct. Ca. Aug. 16, 2013) (citing Calif. Streets and Highways Code § 2704.08(c)(2)(D) and (K)).
[9] *Id.* at 7.
[10] *Id.* at 8.
[11] *Id.* at 9.

acquisition. There are still several remaining causes of action in this litigation. The parties are next instructed to meet with the judge on February, 14, 2014 on pending matters.

With regard to the other state matter, on March 18, 2013, the CHSRA adopted a resolution requesting the Finance Committee authorize the issuance of bond funds for the project, and on the same date the Finance Committee did so. The CHSRA and the Finance Committee filed a validation action with the state court seeking a judgment that would effectively validate the sale of the bonds. A number of entities, including the land owners and County of Kings in the other state matter, filed in opposition. On November 25, 2013, the same judge of the Superior Court, County of Sacramento, denied the validation action, stating that "the Court can find no evidence ... that supports a determination that it was necessary or desirable to authorize the issuance" of more than $8 billion in the Proposition 1A bonds as of March 18, 2013.[12] In light of this ruling, no bond proceeds are available to fund, among other things the state match required under the HSIPR grant agreements. Although the validation action was not approved by the court, the State of California still has the ability to file an additional validation action for Proposition 1A bonds.

High Speed Intercity Passenger Rail Funding

The California High-Speed Rail project is the single largest beneficiary of federal funding from the High-Speed Intercity Passenger Rail (HSIPR) grant program under the American Recovery and Reinvestment Act (ARRA)[13] and the fiscal year (FY) 2010 Consolidated Appropriations Act.[14] In total, the project has been awarded $3.896 billion, of which $400 million was committed to the San Francisco Transbay Terminal project, ($2.952 billion from ARRA, and $945 million from the FY 2010 Consolidated Appropriations Act). This represents almost 39 percent of the total HSIPR grant funding awarded by the FRA.

Most of the funding provided for the project will be utilized in California's Central Valley, on the Bakersfield-Fresno-Merced sections of the Phase 1 project or ICS. All of the $3.896 billion awarded to the California High-Speed Rail has been obligated. However, only $584 million has actually been spent and all federal funds provided through the ARRA must be completely spent by September 30, 2017, under the federal appropriations law "five-year rule."[15]

A majority of the federal funding, $2.55 billion, comes under one grant agreement that requires a near 50/50 split of federal and state funding. FRA revised the grant agreement in December 2012 (amended grant agreement), to allow for a "tapered match," which was authorized by the Transportation Equity Act for the 21st Century (TEA 21)[16] in 1998, of federal and state funding, meaning federal funding would be spent at a higher rate early on in the project in order to meet the 2017 deadline, with the state match "tapering in" later in the project and even beyond the 2017 deadline. The amended grant agreement states:

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[12] *High-Speed Rail Auth., et al. v. All Persons Interested in the Matter of the Validity of the Authorization and Issuance of General Obligation Bonds,* Case No. 34-2013-00140689-CU-MC-GDS, p. 14 (Sup. Ct. Ca. Nov. 25, 2013).
[13] Pub. L. No. 111-5, 123 Stat. 208.
[14] Pub .L. No. 111-117, 123 Stat. 3056.
[15] *See* 31 U.S.C. §1552.
[16] Pub. L. No. 105-178, 112 Stat. 107.

> 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.[17]

Furthermore, Attachment 2, Section 23, of the grant agreement states, in part that:

> Repayment of Federal Funds. If FRA determines that the Grantee has misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the Project property, facilities, or equipment, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Grantee to repay the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA. FRA may also require repayment of any FRA funds provided under this Agreement if the Grantee fails to complete the Project or one of its Tasks or fails to adhere to the Funding Contribution Plan or FRA determines the Grantee will be unable to meet the contributory match percentage identified in Attachment 1, Section 5 and complete the Project according to the Project Schedules included in Attachment 3 or Attachment 3A.[18]

Given the court's recent rulings, the California Proposition 1A state bonds to finance construction of the project are currently not available, and there are no alternative sources of state matching funds yet identified. As noted in a March 25, 2011 letter from then-DOT Under Secretary for Policy Roy Kienitz to CHSRA: "California was awarded funding based in part on the impressive state match they promised in the grant applications. Withholding these matching funds would put the [sic] California's high-speed rail project in serious jeopardy."[19] The Subcommittee will explore the risks posed by these recent developments, the FRA's plans to protect the federal taxpayers' dollars, and what, if any, impacts recent rulings may have on the state's ability to provide matching funds.

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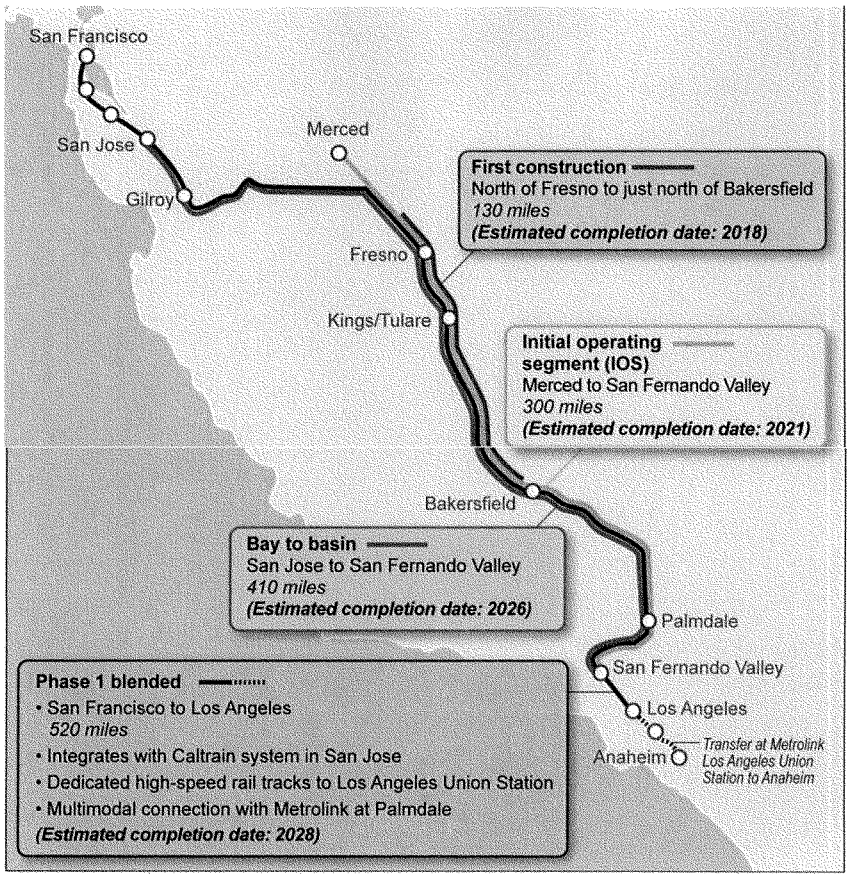
[17] Grant/Cooperative Agreement, Federal Railroad Administration, "California High-Speed Rail Authority," No. FR-HSR-009-10-01-05, Attachment 1, § 5(j) at 3 (Dec. 5, 2012) [ARRA Agreement].
[18] ARRA Agreement, Attachment 2, § 23 at 37.
[19] Letter from Roy Kienitz, Under Secretary for Policy, U.S. DOT, to Roelof van Ark, Chief Executive Officer, CHSRA (May 25, 2011).

INVITED WITNESSES

Hon. Joseph Szabo
Administrator
Federal Railroad Administration

Mr. Dan Richard
Chairman of the Board
California High-Speed Rail Authority

Ms. Alissa Dolan
Legislative Attorney
Congressional Research Service



Sources: California High Speed Rail Authority and GAO.

A REVIEW OF THE CHALLENGES FACING CALIFORNIA HIGH-SPEED RAIL

WEDNESDAY, JANUARY 15, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m. in Room 2167, Rayburn House Office Building, Hon. Jeff Denham (Chairman of the subcommittee) presiding.

Mr. DENHAM. Ladies and gentlemen, the subcommittee will come to order. First, let me welcome our distinguished witnesses and thank them for testifying today. This is the second hearing this session of Congress that I have held on a hearing on California high-speed rail since I became chairman of the subcommittee.

In 2008, the voters of California approved a $9.95 billion ballot measure, Prop 1A. I was serving in the State senate at the time, and voted in favor of this proposition because of the guarantee to taxpayers it would be fiscally responsible, and not need an ongoing subsidy. What was sold to voters was a $33 billion project that would receive equal parts of financing from the State, Federal Government, and private investors. Since that vote, as costs have skyrocketed and the outcomes of the project have remained in flux, I have consistently called for the California High-Speed Rail Authority to develop a viable plan that accepts economic and budgetary realities.

Sadly, after 5 years, we are nowhere closer to that viable plan, nor have any construction jobs been created, even though the premise for the Recovery Act was to create jobs immediately. In fact, in November the project received two new setbacks in the California State court system.

First, the courts found that the California high-speed rail funding plan did not comply with Prop 1A. Those requirements were identified as $26 billion needed to build the entire 300 miles of rail between Merced and San Fernando, and that all environmental clearances be completed for the entire initial operating segment.

Second, the courts found that California High-Speed Rail Authority did not provide sufficient justification for the issuance of $8.6 billion in Prop 1A bond funds. Those bond funds were to be the source of the State match for the $2.55 billion the Federal Government has provided to this project through the Recovery Act.

Therefore, as of now, California does not have the funding in hand to begin supplying the State match for the Recovery Act

grant, and the Federal Railroad Administration's grant agreement with California requires the first State match, that payment, due on April 1.

In this hearing I want to hear from the Authority about how they are going to resolve these deficiencies, where the total $26 billion will come from, and how they complete the environmental reviews for the entire 300 initial operating segments.

I will note that the 2014 omnibus appropriations bill released yesterday includes no funding for high-speed rail, the fourth straight year no monies have been provided. It is clear that the Federal Government will not be the source of more funding.

I also want to understand how the Authority believes that Governor Brown's proposal to use revenue from California's cap and trade program to support the project is constitutional, since independent observers have stated that the high-speed rail program is not an eligible use for those revenues.

I do want to thank Mr. Richard, who is here this morning, for being open and transparent with this subcommittee on the Authority's activities. While we may agree or disagree about the viability of the project, he has displayed professionalism in all of our discussions. However, I have many concerns about how the FRA is reacting to these recent setbacks, and what it is going to do to protect billions of taxpayer dollars.

After the rulings, I sent a letter to the FRA on December 12th with a number of commonsense, simple questions. The Administration sent back this letter that basically states, "Everything is fine. Nothing has changed." They didn't answer a question, and staff has basically refused to provide the data that we feel is necessary to conduct proper oversight.

I note, however, that I originally wanted to have this hearing in December. Ms. Brown and I had discussed that. There were some logistics challenges with Mr. Szabo at the time. We also had a rail catastrophe that I know took some extra attention. So I agreed to delay this hearing for 3 weeks, give plenty of time for schedules, give plenty of time to have the promise of this information brought to this committee. But, as you can see here today, Mr. Szabo was unable to make it. While I understand Deputy Administrator Hedlund is quite knowledgeable, I am disappointed but not overly surprised that the Administrator could not attend.

So, here we are now. And I will ask the same questions I asked a month ago. Hopefully the Administration has had time to prepare and actually give us straightforward answers to straightforward questions. Further, despite the loss of matching funds, FRA has continued to reimburse California for spending on the project. We need to understand what FRA has reimbursed California to date, including since the adverse rulings, and how much matching funds California is required to contribute to the project.

Under FRA's grant agreement, the Administration has the ability today, right now, to suspend reimbursements until the California High-Speed Rail Authority presents a viable plan to identify a new source of the required State match. Given so much uncertainty around this project, why wouldn't FRA take the prudent step to hold off spending more taxpayer dollars until they are satisfied that California has remedied these legal setbacks?

If the Administration continues to march down this same path, operating as though it is business as usual, then I am prepared to take my own action through legislation to force FRA to act in a more prudent fashion. Frankly, after 5 years filled with cost overruns, lawsuits, lost promises of immediate job creation in the valley, and reduced expectations, unless they can come up with a viable plan that meets the requirements of Prop 1A, I believe it is time to end this project.

I look forward to discussing these important issues with the witnesses.

I would now like to recognize Ranking Member Corrine Brown from Florida for 5 minutes to make any opening statement she may have. Ms. Brown?

Ms. BROWN. Thank you. I know that California's high-speed rail program is important to the chairman, and this subcommittee certainly has a responsibility to provide oversight of federally funded rail projects. But this is the third hearing that we have held since December 2012 on California high-speed rail, yet we have not had one hearing this Congress on rail safety.

At the same time, we failed to reauthorize the National Rail Safety Program, which expired at the end of fiscal year 2013. Several Members of Congress have written letters to the committee requesting a hearing on rail safety, particularly given the recent tragedies. Protecting our community and citizens from harm should always be the top priority for Congress. To that end, I am hand-delivering this letter to you today, Mr. Chairman, from all of the Democratic members of this subcommittee, requesting a hearing on rail safety as soon as possible. We urge you to promptly consider this request.

As for the hearing today, like many States, including my home State of Florida, California is struggling to meet the transportation needs of its citizens. According to the U.S. Census Bureau projection, the population of California will be close to 60 million by the year 2050. This explosion in population will result in the crippling of California's already aging public transportation infrastructure.

California's 170,000 miles of roadway is the busiest in the Nation. As a result, the statewide costs at this time in fuel waste and transportation congestion is estimated at $18.7 billion annually. Travelers on California's interstate system is increasing at a rate five times faster than capacity. This is a formula for disaster, and everyone that has driven in California's major cities knows this all too well.

Looking at air travel, the busiest short-haul air market in the country is between Los Angeles and San Francisco, with 100 daily flights and more than 5 million passengers, annually. This is larger than the New York and Washington, DC, markets. In fact, the L.A.-San Francisco air route is one of the most delay prone in the Nation, with approximately one out of every four flights delayed by about an hour.

What is the solution to the congestion? According to the California High-Speed Rail Authority, to achieve the same capacity as the San Francisco-Los Angeles high-speed rail system, California will need to construct 2,300 new lane miles of highway, 115 additional gates at California airports, and four new airport runways.

The estimated costs for these improvements is $1.14 billion over the next 20 years, which is equivalent to $170 billion with inflation. This is four times what it would cost to develop a planned high-speed rail system.

We are going to hear some complaints and reasons why high-speed rail should not be developed in California. Unfortunately, we are not going to hear about any solutions for addressing the congestion disaster that is facing California in the very near future. This high-speed rail project will help the environment, reduce congestion, and create jobs.

Now, I hope that during today's hearing the Members who opposed the development of high-speed rail in California will help us with details as to how they intend to finance this $170 billion in improvement for the State.

With that, I want to welcome today's panelists, and I am looking forward to hearing their testimony. I yield back the balance of my time.

Mr. DENHAM. Thank you. And I would just respectfully remind Ms. Brown that this committee has already agreed to hold a rail safety hearing. We would actually be holding that hearing right now, today, but the ranking member had asked me to hold off on the high-speed rail hearing that we were supposed to have 3 weeks ago. So, we look forward to scheduling that together, and I hope staff recognizes that, as well.

I would like to again thank our witnesses here today. We have two panels today. Our first panel is with Majority Whip Kevin McCarthy, Representatives Zoe Lofgren, Loretta Sanchez, Jim Costa, Doug LaMalfa, and David Valadao. After receiving testimony from our first panel, we will proceed to our second panel of testimony.

I ask that unanimous consent that our witnesses' full statements be included in the record.

[No response.]

Mr. DENHAM. Without objection, so ordered. Since your written testimony has been made part of the record today, the subcommittee would request that you limit your oral testimony to 5 minutes.

Ms. Lofgren, welcome to the committee. Thank you for joining us.

TESTIMONY OF HON. ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. KEVIN MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. LORETTA SANCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; HON. DOUG LAMALFA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND HON. DAVID G. VALADAO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. LOFGREN. Thank you, Mr. Chairman and Ranking Member Brown, for allowing my colleagues to appear before you today. As chair of the California Democratic Congressional Delegation, which is the largest, most diverse delegation in the Congress, comprised

of 38 Members, I am here to reaffirm our strong support for the California high-speed rail project. And that is because our economy improves, and our population—as our population grows, our transportation infrastructure is falling further behind.

As many of us know, the transportation infrastructure is already in very serious need of upgrade in California. And California's skies are blue, our air corridors between San Francisco and L.A., as mentioned by the ranking member, is the busiest in the country. Our congestion is high. And we know that the lost time and fuel wasted in California traffic costs Californians an estimated $18.7 billion each year.

As we watch our population grow—and the estimate is, as Ms. Brown has said, we will have 51 million people by the year 2050—we know that we need to have the capacity to move people north, south. And without the high-speed rail project, it has been estimated that we would need to build over 4,000 new highway lanes, 115 airport gates, and 4 new runways, just to keep up with the demand. And we know that is just not possible.

So, the California high-speed rail project is the largest and most ambitious infrastructure project of our time. When completed, it is going to be able to provide the transportation solutions that our State needs.

Now, Californians, including folks in my home district in San Jose, are going to see immediate benefits from this project. It invests $1.5 billion in the Caltrain modernization program, which will replace Caltrans diesel trains with electric trains on the Peninsula Corridor. And, according to a recent economic impact report by the Bay Area Council, a premium business group in the bay area, the project will create over 9,500 jobs, with over 90 percent being in the bay area. The Bay Area Council also says that the high-speed rail will increase our State's bottom line. The State and local revenues will see an increase of $71 million during the construction phase. And we also know, from this business group, that neighborhoods near Caltrain will see an increase in property value by as much as $1 billion.

As good stewards of the environment, Californians, by and large, also agree that we must make critical infrastructure investments that connect our communities and reduce carbon emissions, while keeping our economy strong. Electrifying Caltrain will make its operation quieter, reduce air pollution by 90 percent, and lower energy consumption by 64 percent, because its electric trains are less noisy and more cost-effective to run.

Now, despite the overwhelming arguments for the need and benefits of high-speed rail, the project, as we know, has detractors. And its first days, the project had a rocky start, before the current management team was put in place. And that led some to say the project was too large, or others disputed the high-speed rail project's business plans, and the like. And that is why I joined Chairman Denham in asking the GAO, the independent, nonpartisan auditors, to conduct a thorough review of the high-speed rail project and its cost estimates, the project's funding plan, and passenger ridership and revenue forecasts.

And, last spring, the GAO came back with its report and gave the California High-Speed Rail Authority high marks for its cost

estimates, ridership estimates, and funding plan. The GAO also made some noteworthy observations, saying that the greatest challenge before California's high-speed rail project is not whether it can be done, but whether it will be funded, particularly on the Federal level, in order to attract much-needed private investment. That certainly continues to haunt the project, because investors question whether the Federal support will be there in the future.

It is also one of the reasons why the California High-Speed Rail Authority's very realistic and responsible business plan is building the project in phases. However, based on experiences in other countries, and positive ridership estimates by the GAO, it seems likely that the private sector will invest in the project if it is allowed to move forward.

It will take both public and private support at all levels to make high-speed rail in California a reality. The people of California, as been noted, have already voted in support of it, and taxpayers' dollars have already been invested in it, including $3.3 billion in Federal grants. And just this week, Governor Jerry Brown announced his State budget, pledging $250 million in cap and trade revenues for high-speed rail, while laying out continued funding for the project in the following years.

Now, given the environmental benefits, both short term and long term, using cap and trade funds for this project is very appropriate. And our delegation would like to commend Governor Brown for his leadership on high-speed rail.

We know high-speed rail can work in America if it is given a chance to succeed. As the GAO noted in its report, several private consortiums were preparing bids for a high-speed rail project in Florida before that State's Governor pulled the plug. And, as recently as January 9th, the Washington Post reported that Japan is seriously interested in developing a high-speed rail line between Washington and Baltimore, Maryland, even offering to foot half of the projected $8 billion it would cost to build.

You know, our global competitors aren't holding back on their high-speed rail infrastructure. And that is because, around the world, high-speed rail has been shown to be an effective, popular, and profitable mode of transportation. When it comes to transportation, I believe the United States should be second to none. It was solid investments in infrastructure that helped make the 20th century the American century. And California's high-speed rail project can help continue that kind of success for our country in the century to come. I thank the chairman and the ranking member for the opportunity to testify today. And I yield back my time.

Mr. DENHAM. Mr. McCarthy, welcome to our committee.

Mr. MCCARTHY. Thank you.

Mr. DENHAM. You may proceed.

Mr. MCCARTHY. Well, thank you, Mr. Chairman, for holding another important hearing on California high-speed rail, and for allowing me to testify today.

I have expressed my opposition to the California High-Speed Rail Authority's deeply flawed business plan, which is not what California voters approved in Proposition 1A back in 2008, and I do so again today. I continue to have serious concerns with the

Authority's finances, and how they plan to come up with the tens of billions of additional funds needed to complete the project.

To date, the Authority has never provided a satisfactory answer, and continues to move forward with this project. My colleagues and I even commissioned the Government Accountability Office to audit the Authority's plan. And GAO also expressed concerns about the Authority's funding sources, public and private. Not one additional cent has been identified for this project. In fact, the Authority recently lost its largest source of funds when a Sacramento County Superior Court judge prohibited the Authority from spending State funds on this project, because they are violating the requirements set by Prop 1A.

That leaves the Authority with just little over $3 billion in Federal tax dollars to waste while they come up with new schemes to get State funds like cap and trade, not to mention one of the original requirements for spending these Federal funds was that the State matches every Federal dollar it spends, a requirement the State now looks unable to ever meet.

The Authority's business plan and funding sources for high-speed rail project were questionable from day one. The real concern here is the prudent use of billions of taxpayers' dollars, which the Authority has proven time and again that they are unable to be good stewards of.

In addition, I know many on our side of the aisle were disappointed by the Surface Transportation Board's decision last year to approve the first segment of this project. I disagree with this decision, and believe the STB should have reviewed the project in its entirety, rather than an unprecedented segment-by-segment piecemeal fashion. At least the STB refused to approve the second segment of this project until environmental documentation is complete. This is just another example of how the California High-Speed Rail Authority continues to bend the rules and seek exemptions to ram through high-speed rail because they believe they know what is best for Californians.

Mr. Chairman, the Authority has yet to break ground for the high-speed rail project, but they have already dug themselves in a hole, and are wasting the public's money. Since approving Prop 1A, California voters have turned on this project, because they now see it for the boondoggle it is. The Authority has not dealt with the Central Valley communities in a meaningful manner, has failed to properly plan this project, and has failed to secure any additional funding. If the Authority cannot prove to us and this committee that California high-speed rail is viable, what makes them think they can build it, much less operate and maintain it?

I call again for an end to the Authority's current plan for California high-speed rail, and that is not one more Federal dollar is spent on this boondoggle. Thank you for your time today. I yield back.

Mr. DENHAM. Ms. Sanchez, you may proceed.

Ms. SANCHEZ. Thank you, Chairman Denham, thank you Ranking Member Brown, and to the Members who are here today. I appreciate this opportunity because this, I believe, is instrumental to the economic recovery for California. This is bold, it is big, and, in other words, this is Californian.

When the Spanish settled California, they built 21 missions, each a day's ride apart by horseback, to connect our State. They did that because they knew commerce was important for the future of California. And we are the economic engine of the United States. When we built the aqueduct, it too cost money. But it moves water up and down California.

When Governor Pat Brown built the UC system, it gave accessibility of education, higher education, to Californians.

These are bold, they are big. And this project is just as important to California. It is probably our best project to get us out of this real recession we have felt for so long.

There are a couple of realities in California. Our unemployment rate is still stuck at over 8 percent. And we have some of the worst traffic congestion in the Nation. High-speed rail moves both of those points. In the first 5 years of construction alone, this will support 100,000 new construction jobs, in particular in the areas where we need our people to work. And it is estimated that there will be over 1 million indirect and direct jobs related to that in my area, in the Los Angeles metropolitan area. Or, as I say, where we dream and build big in Anaheim, California.

The project will move forward because there are funds. Let's talk a little bit of Proposition 1A and just what happened. The court has not issued an injunction against this project, nor have the recent rulings prohibited the State from selling bonds. In any major project—and remember the background that I come to this Congress with, transportation and infrastructure financing. And, believe me, you can ask people in California. As a financier, there were many times I stopped big projects and told them they had to wait their time until the financing was correct. So I am not afraid to do that. But this is the time for this project. I believe that the Authority has worked very hard to put together a finance plan that will work for Californians.

I want to also say that we have to think about how we move right now from southern California to northern California. You either have to drive—and when I was young—and I admit I used to speed a little bit more than often—it would take me about 5½ hours to get up to San Francisco from Anaheim. That was a—well, that was about midnight, when there was nothing on the highway, on that "5," not dillydallying along our beautiful coast. I just went up to Ventura, what used to take maybe 2 or 2½ hours to go, and today it takes about 3 or 4 hours to get there. So to San Francisco, I imagine it is much more than the 6 hours I typically think.

As a private pilot in my former life, I know what it felt like to be at Orange County John Wayne Airport, and have all the major commercial airlines get in front of me and wait and wait with the propeller turning, spending fuel and time as I rented that plane. So, this whole idea that somehow our air is going to continue to get us out of this congestion problem is just not true, let alone—excuse me, for those who are in San Francisco—the weather you have there means that many times those of us who are trying to fly into your beautiful city just don't get there.

This is an important project. It is important for jobs. It is important for our economy. And I urge you we all need to work together to make this a reality. Thank you, Mr. Chairman, for your time.

Mr. DENHAM. Thank you, Ms. Sanchez.

Mr. Costa, you may proceed. Good morning.

Mr. COSTA. Thank you. Good morning, Mr. Chairman and Ranking Member Brown, and the members of the subcommittee. Thank you for taking the time and allowing me to testify before you today.

As we all know, building major infrastructure projects are never, ever easy. And the oversight of these projects are necessary and appropriate. And, therefore, this committee's work is appropriate. But that is also why I joined Chairman Denham, along with many of our colleagues, Republicans and Democrats alike, in asking the Government Accountability Office, the Government's independent watchdog, to audit this project.

After more than a year of review, the GAO reported that the Authority followed best practices in each of the areas they studied. Ridership, revenue, cost estimates, and the analysis of the economic impact of the people, and this project have all been examined by the GAO. And they are—their information is there for all of us to read.

In fact, the GAO's report shows that the California High-Speed Rail Authority, over the last 2 years, has taken stock on a number of the comments that were made, and some of the criticisms that, Mr. Chairman, you and others and myself have made. They have listened and they have responded. And that is why they have come out with a new business plan that has created this blended approach.

Therefore, I think things are beginning to move on the right track. But there are still challenges that remain, clearly. But this is not unique to this project or any other major project. We know that building infrastructure in this country is challenging. It is so difficult to get anything done, whether we are talking about water, whether we are talking transportation or education.

But yet today, in California, we are living off the success that our parents and that our grandparents made. In the 1950s and the 1960s they were multitaskers. They not only invested in what is one of the world's great education systems, but they invested in one of the world's greatest water systems, and they invested in the transportation system, because they thought we could do those critical things that were necessary. When President John Kennedy came to Los Banos in 1962, 51 years ago, he said, "We are investing in these water projects because we believe in the future of America." And it doesn't matter what part of the country we are talking about, we ought to be investing for all Americans.

When California sought to build the State water project, guess what? It faced lawsuits. Guess what? It faced funding challenges. Guess what? It had opposition. Does that mean that the folks in those days, in the 1950s, said, "Well, gee, we got lawsuits, we got opposition, we got funding challenges, maybe we shouldn't pursue this great water project"?

Our forefathers knew that maybe the water wasn't quite necessary then, but they knew future generations of Californians would need water in the next century. Today we find ourselves water short. So what did they do? They buckled down, they worked together, and they built the largest, most complex water system

that the world has ever seen. We ought to be doing the same thing, working together.

I am hopeful today that we can focus on those legitimate challenges facing California high-speed rail, and that we can work together to deal with the challenges in this project and make it work.

I also hope we can stick to the facts, you know. I mean the facts are the facts. We can all have our version of the politics; we get that. But the facts are that California has 38 million people today living there. And by the year 2030 we will have over 50 million people. And we are behind on the investment in our transportation infrastructure, we are behind on the investment in our water infrastructure and our education system.

So, to accommodate the future growth of California, we should be investing in all of the above. High-speed rail is a part of that response. In 2008, Californian voters approved of this construction of this system, a system that would address our intermodal transportation system, including our airports and our highways. From the time the first shovel hits the ground later this year, the project will be a true economic game-changer. We have too many unemployed workers, not only in the San Joaquin Valley, but throughout California. Many of them are being trained for the thousands of jobs this project will create.

During this subcommittee's last field hearing in California, in Madera, we saw many hard-hats in that room, people in the audience looking for good-paying jobs. We ought to be working together for these Americans sooner, rather than later.

Now, the impacts to agriculture have been well stated, and I am very, very, very focused on that. The major investment in our State's transportation network cannot and will not come, in my view, at the expense of San Joaquin Valley's agricultural sector. Yes, there will be impacts. But, like any transportation system, there are impacts. We have just expanded Highway 99 between Congressman Denham's district and mine, from Merced to Chowchilla. Guess what? It has taken 1,200 acres of land. It has impacted prime agriculture. But we accommodate it, and we paid for that, and we mitigated for that, just as we must for high-speed rail.

As a third-generation farmer who continues to farm today, I fight every day on behalf of farmers and growers to preserve their businesses and our valley's way of life. I reject the idea that investing in our State's transportation network means that we cannot invest in our State's water infrastructure. We can do it today, just like they did it in the 1950s and the 1960s.

California can afford to invest in our water and our transportation because the success of our State in the next 30 years depends upon both. That is what our parents and that is what our grandparents did.

Mr. Chairman, and for others who are naysayers on this project, I wonder, I just wonder out loud what you might have said to that great American President, that great Republican American President, Abraham Lincoln, in the middle of the Civil War in 1862, when he decided boldly to build a rail system across the Nation. "Well, gee, Abe, maybe we ought to wait until the Civil War is over. Maybe we can't figure out how to fund this." You know,

maybe that is what we ought to do. But President Lincoln was bold and he was visionary. And he understood that the Nation needed to not only—to end this conflict, the Civil War, but he also needed to invest in America.

The California high-speed rail project does face challenges, but it is no reason to kill the project. For those who oppose this project, give us your plan. Tell me, tell everybody else how you are going to build more freeways in California, how you are going to build more airports in California, and how you are going to mitigate for the impacts of those communities with those airports and those additional freeways. And how are you going to provide the subsidies to pay for the expansion of those airports and the expansion of those freeways? Because subsidies are directly related to that infrastructure.

With thousands of jobs for California and the valley on the line, let's use today's hearing as an opportunity to exchange ideas on how we can best invest in California's infrastructure as an example on how we need to invest in America's infrastructure, because that is what this subcommittee ought to be about, and that is what we ought to be about in Congress, working together to invest in America's future. I thank you for your time.

Mr. DENHAM. Thank you, Mr. Costa.

Mr. LaMalfa?

Mr. LAMALFA. Thank you, Mr. Chairman, committee members, for the opportunity to weigh in on this issue, one we have worked on a lot in California.

You know, you would have to pose the question, what is the utility of this project? It is being compared to a lot of other important infrastructure projects in the history of California, or in the history of the Nation. I think nobody would dispute the interstate system or California water project, the Federal water project. Other comparable issues have been very useful to many Californians and many Americans. This here is a much more select group.

Indeed, in order to afford to ride high-speed rail, it would have to be subsidized per ticket in the true cost of operating it, or someone is going to have to pay probably $300 per ticket to ride it from L.A. to San Francisco, or vice versa, in order to sustain itself. It is not going to meet the mark of matching airline ticket prices. There is no possible way.

We have heard some pretty grand claims on what it would provide for California. The Authority at one time was trying to claim a million jobs for Californians. We had a hearing in the State legislature on it, finally pinned them down, said they meant a million job years, which might translate to approximately 20,000 jobs during the time it is to be built.

We heard claims on what it would cost. The voters of California in 2008 were told that this would be a $33 billion project, up to $45 billion if you add a spur to Sacramento and one to San Diego. Those two have been long since abandoned in this project. And the price ballooned at that hearing we had in November of 2011 in the State senate to just under $100 billion. So what did the audit folks think about that, what the voters were sold when they were originally told $33 billion?

So, the Governor revised the plan down to $68 billion, utilizing transport in the bay area and Los Angeles. Now, I can understand why those folks would want to have their areas enhanced with electrifying Caltrain, I am sure that is a good thing. It is not the domain of high-speed rail to be doing so. This revised plan is not even legal under Proposition 1A, because it doesn't deliver a true high-speed rail all the way from San Francisco to all the way to downtown Los Angeles. So, in time, this will be exposed.

So, we have to ask ourselves here today, as a Federal body, are we being good stewards of Federal tax dollars with the $3-plus billion of stimulus money that is still captured for this plan, as well as telling State voters that your investment of $9-plus billion in State bonds, which have to be paid back two-to-one ratio—is this a good investment for you, for a plan that no private investors want to come in on?

We can see that a forward-thinking project like the Maglev, perhaps, running from DC to Baltimore, has already attracted Japanese investors as a possibility. High-speed rail is using 18th-century technology. It is steel wheels running on a rail. It might go faster if it is not stopping in every burg up and down the valley in order to gain the votes of those legislators to put high-speed rail on the ballots. Indeed, how many true high-speed rail end-to-end trains are going to be run, or will be able to run, at 220 miles per hour on this project?

It is not going to meet the goals. It is not going to meet the cost goals. We heard some creative ridership numbers posed in the past by the Authority. There might be 32 million riders, and it is going to replace the airplane riders from S.F., to L.A., vice versa. There is only 8 million people that use airlines between those two towns. And so we are going to replace that with 32 million riders? There is only 31 million riders that use Amtrak nationwide, in the 48 States, per year. High-speed rail in California is going to surpass that?

We have got some pretty phony numbers operating on this thing. And we are still seeing that taxpayers are going to be footing the bill federally and at the State level, paying back those bonds.

So, we can only identify $13 billion of real funding so far to go into this project. By Governor Brown's estimate, it would be $68 billion. Where is the other $55 billion going to come from to build this thing? And what are the benefits going to be to global warming, or climate change, or whatever that is?

Now, the Governor's proposal was to divert $250 million from California's new cap and trade into this project. That is not fulfilling the goal of whatever cap and trade is, because high-speed rail won't be operable for at least 30 years to replace and start on the positive side on reducing CO2. In the meantime, they are going to be constructing it, using heavy equipment to build the project.

We saw the folks that got stuck in Antarctica the other day, trying to explore the ice sheet down there. They felt bad because they had to get rescued because there is too much ice, and so they had to—decided they had to offset their carbon footprint of getting rescued by the helicopters, and so they are going to go plant trees somewhere in Australia or New Zealand to offset that.

Or I saw an article last night. In California, because of all the CO2 emissions that are going to be happening during the 30 years of construction, they proposed they are also going to plant thousands of trees to offset the CO2 output from its construction. So we are not going to realize benefits any time soon to the CO2 equation of this project. Indeed, when I saw that—you know, there is a term in Hollywood, "jump the shark." I think this project really jumped the shark when we started saying we are going to plant trees to offset carbon when it is supposed to be all about offsetting carbon some time in the future.

We are at a point that we will need to assess what our priorities are, as a Nation, for our budget, for our spending. At a time—we had a budget deal the other day that is cutting dollars to retired veterans. We are going to go tell the people of this country or people of California that this is a project that is worthy of their goals? All the other things we are having to deal with? Food stamp program, whatever.

We are looking at this still at this point, when we are $55 billion short of the funding to do what is now an illegal plan, we need to really take a strong look at putting the brakes on it here in Washington, DC. And, as I hope, Californians will see the opportunity to re-vote on this project by a ballot initiative that is underway right now.

So, Mr. Chairman, I do appreciate the time, and I hope this committee will keep delving into this issue and the falsehoods that have been used to sell this to what was at the time a very optimistic votership back in 2008.

So I thank you for your time, and I yield back.

Mr. DENHAM. Thank you, Mr. LaMalfa.

Adam, can you close the door?

Mr. Valadao, you may proceed.

Mr. VALADAO. Chairman Denham, Ranking Member Brown, and members of this subcommittee, thank you for the opportunity to testify before you today. As a lifelong resident and taxpayer in California's Central Valley, I have watched the proposed California high-speed rail project transform over the years. I have watched as the estimated costs of this project have ballooned tens of billions of dollars more than was promised to the voters in 2008. I have watched as the California High-Speed Rail Authority has invented a plan that takes thousands of acres of farmland out of production and destroys hundreds of homes and businesses throughout our communities.

Every single day I hear from constituents of California's 21st Congressional District who are opposed to, and worried about, California's misguided high-speed rail project. They say the project spends too much money, delivers too little on its promises, and threatens their very livelihoods. Constituents located in the path of the project complain about the lack of information provided to the landowners, and the sheer fear they are sacrificing their dreams and hard work for a project that is not feasible.

The current path, which is constantly changing, calls for the tracks to cut across the entire length of the San Joaquin Valley through some of our Nation's most productive farmland. Fields will be cut in half, fertile ground will be taken out of farming, and pro-

duction will suffer. For many, this farmland is their home, and the proposed high-speed rail project will impact countless families. All of this with very little benefit to my constituents in the Central Valley.

While estimates of the project's price tag continue to escalate, I find it increasingly difficult to reconcile the tremendous cost of the project with the limited benefits it provides to my constituents and to all taxpayers in California, as a whole. When California voters approved the project in 2008, they were told the project would cost $33 billion, and burden would be shared equally between State and Federal Governments and private investors. Since then, cost estimates skyrocketed to over $90 billion for a fully operational high-speed rail line, and nearly $70 billion for a new blended line that is only high speed some of the time.

California's taxpayers simply cannot support a multibillion-dollar boondoggle. To date, the State has been unable to uphold its promise and provide matching funds for the Federal dollars. As this committee continues to weigh the pros and cons of California's high-speed rail project, it is important to consider the trade-offs for this project. Every one of our constituents makes trade-offs when they manage their family budget, and our Government should operate no differently.

When the State of California chooses to spend the taxpayers' money on high-speed trains, they are forced to set aside other priorities. This year, California faces a drought that leaves the availability of clean, high-quality water in jeopardy for families and farmers. At the same time, California's aging water infrastructure is struggling to keep up with demand from a growing population. When the State of California chooses to spend taxpayer money on high-speed rail, they are choosing to neglect addressing our valley's water crisis, and they are choosing to jeopardize water availability for over 30 million Californians.

There was a time when California led the world in technological advancement and innovation. Unfortunately, the California high-speed train project is anything but innovative. California's high-speed rail proposal relies on old technology that is on its way to being phased out. Meanwhile, across the globe, America's competitors are already well on their way to developing the next generation of high-speed rail technology.

Today, innovation is increasingly being performed overseas by foreign workers and inventors. At the same time, the United States continues to lag behind in many measures of worldwide educational achievement. We will continue to lose our advantage to foreign nations if we do not educate our young people. When the State of California chooses to spend taxpayer money on high-speed rail, they are choosing not to invest in education, our children, and our future.

Last October, the State of California was ordered by a Federal judge to free over 9,600 inmates by the end of 2013. The reason? California has been unable to provide the funding necessary to stop overcrowding in prisons and keep dangerous criminals behind bars. I think many of our constituents would agree that public safety is among the most basic of Government functions. Simply put, if California cannot afford to keep convicted criminals behind bars, it cer-

tainly cannot afford to build a needless billion-dollar train project. When the State of California chooses to spend taxpayer money on high-speed rail, they are also choosing to put the safety of my constituents' families and communities in jeopardy.

The California High-Speed Rail Authority continues to pursue this project with only 4 percent—$3 billion out of $68 billion—of the funding necessary to achieve the largest infrastructure project in the country. To continue to pursue high-speed rail in California is to spend billions of dollars we don't have on a project we don't need. California high-speed rail comes at a tremendous cost to taxpayers while providing no benefit to my constituents. The project will destroy homes and businesses throughout my district and divert precious tax dollars away from far more pressing issues, like expanding our water infrastructure, protecting our communities, and ensuring access to quality education for our Nation's young people.

The greater cost is to the entire Nation, as the public will continue to watch the Authority squander billions in pursuit of a dream they cannot achieve. Now, more than ever, the Central Valley must come together to make their voices heard, and oppose this wasteful project.

I will continue to uphold my promise to my constituents and oppose the California high-speed rail project. I look forward to working with you, Chairman Denham, and members of the subcommittee, to make sure this wasteful project is held accountable to the taxpayers.

Mr. DENHAM. Thank you, Mr. Valadao. Out of respect for each of our witnesses, I know you all have busy schedules. If you do need to go, we fully understand. But, at Ms. Brown's request—she has requested that we do one round of questioning. So, again, if you do need to leave, that is understandable. But if you do have time to stay and answer a question from panel members, we would appreciate that, as well.

Let me start by—it frequently comes up: Do you like having a new train in California or not? That has never been the issue here. The issue has been from a Federal perspective of can you afford a project that continues to grow out of control, and what is the business plan. And, from a California perspective, what are your priorities? Sixty-eight billion dollars, if that is the true number, if it doesn't grow any further, could rebuild our entire water infrastructure. Now, those of us that represent California's Central Valley, we know how important water is.

Rebuilding our entire water infrastructure? The Federal obligation for every water project that is being proposed today, and every highway project in California, expanding all of that, and still having money left over for aviation infrastructure. I think we would actually even have money left over for education and public safety in the process. We are talking about a minimum of $68 billion. It is about priorities.

We have some real needs in California. Our schools are falling behind, our public safety is a big issue, with people leaving prison early, and certainly our infrastructure is falling apart. This is about our priorities.

Lots always talk about relieving traffic. This is not a commuter rail. This is going from L.A. to San Francisco. There is a reason that the comparison to this is the price of an airline ticket. This would be nice to have. But I think the question that every member of this committee needs to see and understand is the $55 billion that is still needed is more than we spend on infrastructure across the entire Nation. So is every member of this committee, every Member of this Congress willing to give up the money for their State for California to expand a rail system that goes from L.A. to San Francisco, may not relieve our traffic congestion? It would be nice, but maybe out of control.

I just have one question for one Member. Mr. LaMalfa was in the State legislature, as I was, when this was being put together, while we were debating it, we were voting on it, and certainly saw the guarantees and the promises that were made within this. And it is my understanding that you did, while you were in the assembly, present a bill on—going back before the voters. This had changed many times.

I would just ask you to explain what your reasoning for wanting to bring this back to the voters was, and what was in your legislation.

Mr. LAMALFA. Yes, thank you, Mr. Chairman. In the State senate I offered two bills that had to do with high-speed rail. The first one was called Senate Bill 22 to merely put a pause on high-speed rail spending, planning, eminent domain, what have you, until a true plan could be brought forward. Because there wasn't a plan that really articulated true costs. We saw all the pie-in-the-sky numbers. The year after the 2008 vote, where it was claimed $33 billion, 1 year later the price was adjusted up to $42 billion in 2009. The voters at that point had already been sold a bill of goods. So, my proposal was to say just put a pause on any spending until a true plan, stem to stern, could be developed.

Then my later bill was Senate Bill 985, which, at the time, at the—after the November hearing in 2011, the price of the high-speed rail had been adjusted upwards of $98.5 billion during that mark I mentioned. So that bill was to place it simply back on the ballot in front of the voters, asking the people of California, "Would you like to still go through with this plan, in light of all the other challenges we face, with public safety, with law enforcement, with fire, with our school system, prisons," whatever, you name it.

And so, I thought those were worthy efforts to ask again the voters of California that. And an assemblyman out there is proposing that bill again, Assemblyman Gorell down in Santa Barbara.

So, I hope that the legislature would deem to place it on the ballot or go the initiative process. But I thought it was a very important question, to re-ask at that time, since the numbers had gone up so dramatically for the project. After that November 2011 hearing, indeed, there was a scramble to try and re-adjust the numbers. That is why the project was re-adjusted to now incorporate Caltrain and local infrastructure in the bay area and in southern California, so that it is now a San Jose to North L.A. County high-speed rail, and utilizing with other ones, which is illegal under Prop 1A.

So, those were the efforts that we tried at, but California Legislature being what it is, they are still hell-bent on doing this project as-is.

Mr. DENHAM. Thank you, Mr. LaMalfa. Ms. Brown?

Ms. BROWN. Thank you. And thank you, Mr. Chairman, first of all, for agreeing to schedule the safety hearing workshop, or hearing, which is important to all of the Members, both Democrats and Republicans.

Let me just say that we in the Congress have dedicated $8 billion, period, for high-speed rail. There is not another Member in Congress that has given more to the California project than I—$1 billion. So you have my money. My Governor sent it to you. You all competed for it and won. So I have already given $1 billion. Thank you.

Now, as I travel around the world, everybody is moving ahead of the United States and investing in rail. We started the rail system, and now we are the caboose. And they don't use cabooses any more. Seventeen billion dollars, Saudi Arabia. China, $300 billion. And we are fighting.

I mean, California is the most progressive and—I visit you all constantly. And let me just tell you. Talking about driving, I don't even want you, Ms. Sanchez, to even carry me around in the traffic. It is so scary. We have got to find a way to compete and be a leader in transporting people, goods, and services. Can you respond to that? Because I haven't heard any way, any discussion as to how we are going to be competitive with the rest of the world.

And someone mentioned other countries. Let me tell you—they want to participate. I mean you—the French, the Chinese, the Italian. They are constantly calling. They want to partner. Yes, ma'am?

Ms. SANCHEZ. Well, I hope you were thinking that you didn't want me driving you around in my car because of the traffic, not because of my driving skills.

Ms. BROWN. Both.

[Laughter.]

Ms. SANCHEZ. So, several things. The first is while this is not a commuter line, per se, the fact of the matter is, for example, plenty of people go from Anaheim into downtown L.A. today on train. I imagine if we could get faster speed, there would be even more who would do that.

The biggest problem for us, coming from the south of L.A., is getting through L.A. to get to the other side. This is where we hit traffic, not 3 hours of the day, but all day, every day, everywhere, any way, et cetera. So that would be a big deal, when someone is talking about how many stops you have. We don't need a lot of stops, but we certainly would love to have a faster way to get across L.A.

Even if we could do that by air, by the time you go up in the air, and you go that short distance, and you come down in the air, I mean, you are spending 3 hours or 4 hours, at least, doing that. In particular, having to be at the airport, TSA, et cetera.

So—and remember that since we had that crash of a big liner and a little liner over Cerritos in our area, as a pilot, I would tell you that we have very limited air space going on. It is a very traf-

ficked air space. And, again, fog in Sacramento, the situation in San Francisco, we need to move our people.

And let me end with this. I told you we were the economic engine. Given any day, any year, we are anywhere between the fifth and the eighth largest economy in the world. I am astounded, because I had not heard Mr. Costa's number of we have 38 million people today. I know that. But if we are going to have 50 million people by 2030, this is a major problem. And we cannot build wider roads through our places.

In the El Toro "Y" intersection, which is, I think, the widest freeway at least in California, you can—I am told you can see it from the moon. When you are up in a spaceship, you can actually see my highway down there. So we need to get this going. It needs to happen. We need to move our people. And there are plenty of people who are afraid to fly, who are—don't have the time to drive, who I know we could get on that train to go up to San Francisco, and 2½ hours later be there, eating some great seafood.

Mr. COSTA. With the time remaining, let me quickly just indicate that the comments you made about the busiest, highly used air traffic corridor in the country, San Diego—I mean Los Angeles-bay area is true. But the comments that the chairman made about taking the $68 million—billion dollars, excuse me—and applying that to the other systems, I mean, the seven airports that we talk about are all built on postage stamps. You are not going to expand them. And the cost of the eminent domain and that—the freeway, it is the same thing. The corridor is the cost of those freeways.

You are talking about impacts to communities in the valley, which are real, and we need to mitigate for, but they are magnified tenfold when you talk about expanding those same freeways in the urban areas. And all the lawsuits and all the opposition that we see that has been concentrated in the last several years toward high-speed rail, I can guarantee you will be similarly used for some of the same reasons, trying to expand those airports for noise and for traffic, as well as for those freeway systems. And that is why you need an integrated, multimodal approach that uses our road systems, our air systems, and our rail system.

And we are going to have to invest in all these areas, like our parents did, in water and education. We share those goals.

Mr. DENHAM. Thank you, Mr. Costa. Mr. Webster.

Mr. WEBSTER. Well, thank you, Mr. Chairman. I don't usually get engaged in somebody else's food fight.

[Laughter.]

Mr. WEBSTER. But I do have a question. Is there a neutral party that could tell me about the two lawsuits, and what the implication of those judgments were?

Mr. DENHAM. Mr. Webster, that is going to be the next panel.

Mr. WEBSTER. Oh, that will be the next panel. All right, so, great. Well, thank you all for coming today, and it has been very interesting.

Mr. DENHAM. Mr. DeFazio?

Mr. DEFAZIO. Thank you, Mr. Chairman. I was pleased to hear you announce at the beginning of the hearing that you had agreed to schedule hearings on rail safety. And we haven't had a real hearing on rail safety for 3 years now. The last one that was held

in the last Congress by the Republican majority was one against regulations and rules that might bring about more safety.

So, I am pleased to hear that. I specifically asked for hearings on the DOT 111 tank car, which has been identified since 1992 as inadequate to withstand a rollover, crash, or derailment. It was news to everybody on this side, it would be news to the ranking member, the ranking member of this committee, to the—our chief of staff on our side, and to me, that the hearing had been agreed to and scheduled. But I am really pleased to hear that. Maybe someone knew that we were all going to bring up this issue, or a number of us at this hearing, and it got scheduled just before the meeting.

As to the subject at hand, the chair made a point about how much this would, you know, compare to the rest of our investments in transportation in America. And, you know, I would agree that it is a challenging number. If there is going to be substantially more Federal investment, given the dearth of Federal investment—in fact, Federal investment in transportation in this country is going to drop by over 90 percent, absent a new funding source and reauthorization by October 1st. So it would be even more of a contrast.

But I think the point that was made—and I will ask a couple Members from there—but, I mean, if you are moving 8 million passengers by plane—I have spent 27 years on the Aviation Subcommittee—I am not aware of any way to enhance the capabilities or capacity, absent the building of a new airport somewhere between L.A. and the San Francisco area. I am just wondering, with the expected increase in the California population, I expect that number will go up substantially. How are you going to accommodate that?

Somehow, third-world, developing countries, you know, are able to build high-speed rail systems, but we just can't. We are the United States of America. We can't maintain our bridges, we can't build high-speed rail, we can't compete in the world economy, we can't move our people efficiently. What the heck? What happened to America and our vision?

Mr. Costa, would you address—can you address that? How else are we going to deal with moving these people back and forth?

Mr. COSTA. Well, I think there is only really one way that we did it, and that is creating the integrated, multimodal system that has worked in other parts of the country, both developed countries, in Europe and Japan, as well as in developing countries, as you mentioned, places in Asia and elsewhere.

So, the fact is transportation experts have studied these challenges with densities for a long time, and they know that there is not one silver bullet. You have got to use all of the technologies. And for those who—I have spent a lot of time on this stuff. Making reference toward high-speed steel on rail as an old technology, let me tell you. They are fifth generation of steel on rail. These trains have gone on regular corridors in France and Germany as fast as Maglev, 350 miles an hour they have been clocked. The Germans and the Japanese, I think, are very smart people. They have developed both technologies, Maglev and steel on rail, and they have

chosen for themselves to be the most cost effective steel on rail for their needs and for the foreseeable generation or two.

And the fact is that, if we want to be smart about investments, at the end of the day—and you hit the nail on the head, Congressman DeFazio—we have got to, on a bipartisan basis—and this subcommittee is, I think, where it starts—figure out a strategy on how we are going to fund America's infrastructure for transportation. We can't do it with fairy dust. We have got to do it with some practical, commonsense means on how we are going to invest in every region of America. And it costs money; guess what?

That is what our parents did. That is what our grandparents did. They invested. They knew it cost money, and they were willing to make those kinds of investments. I mean, otherwise, we are just playing to the public. Well, we have to have this, we have to have that. But, no, we don't—I don't want to—it is unpopular, politically, to talk about how you pay for these things.

Mr. DENHAM. Thank you. Thank you, Mr. Costa. And I would just remind Mr. DeFazio that Florida is not a third-world country. Texas is not a third-world country. They are just doing high-speed rail much cheaper, and with private investors.

Mr. Duncan?

Mr. DUNCAN. Well, thank you, Mr. Chairman. I have been in another hearing, so I was going to reserve my questions to the panel. But since you all are still here, I will just very quickly mention that a few weeks ago there was an article in the Washington Times saying that estimated cost has gone from $33 billion to $68.5 billion. Does anybody know how much this is going to cost us? Are these cost estimates going to keep going up?

Ms. SANCHEZ. Mr. Duncan, I think, again, that the second panel, as quickly as you can get to it, will be the technical people who will go through the plans, et cetera.

Mr. DUNCAN. That——

Ms. SANCHEZ. From both the Federal and the Authority.

Mr. DUNCAN. That same article said 52 percent of the Californians were against this, and with some undecided, so that there was a minority in favor. What do you say about that?

Ms. SANCHEZ. Mr. Duncan, I would just say that I am from Anaheim, California. There were many cities that were approached before we built Disneyland. Nobody wanted it, because they thought it was pie in the sky. We built it in Anaheim. It is the number one icon in the world.

I will tell you that Anaheim is currently building—it is in construction, it is probably 75 percent done—the regional transportation hub which will house the end of the high-speed rail. We will have that finished in this year. So when people say, "People don't want it," I am going to tell you we not only want it in Anaheim, but we have put our money—we have built the cart ahead of the horse, if you will, because we truly believe that we need this project in California.

Mr. DUNCAN. Do you all want to say anything?

Mr. LAMALFA. Mr. Duncan, thank you. I have lived this thing in the State legislature since 2010. And, as a farmer, I would also speak that my colleagues that live down in the valley—Mr. Valadao could attest to—their lives are going to change a lot, their cities,

their way of life, because they are going to have this thing running through there that is 70 feet wide, changing their access to normally rural roads that are now going to have to have overcrossings every half a mile or 2 miles, or whatever they deem they are going to spend on them.

So, a farmer with a tractor no longer just crosses a road. He has got to go several miles with a low-speed tractor to move his equipment back and forth to his fields that are now being sliced into small—maybe 12-acre—parcels and ribbons that way.

But to get back to your question on cost, indeed, it was sold to the voters as a $33 billion project for the San Francisco-to-L.A. line. A year later, it was revised to $42 billion, after the voters had already left. When we had the hearing in September—excuse me, November 2011, they finally admitted it was a $98.5 billion project to do the legal project, true high speed from San Francisco all the way to Los Angeles, or vice versa.

So, the modified project, to get the cost down and not scare everybody so much, did reduce to $68 billion. But that means it is not a true high speed from San Francisco all the way to L.A. They are going to use Caltrain, they are going to pay to help electrify that track in the North and do other infrastructure in the South.

So, the real number, for a legal Proposition 1A project, is somewhere around $100 billion as an old estimate. With inflation, who knows where it is: 120, 130, 150? We see how these things go. Just ask the Bay Bridge what that cost.

And so, if you want the real numbers of a legal Prop 1A project, you are somewhere north of $100 billion. And so we are not just 55 short, we are 80, 90 short, or more.

Mr. DUNCAN. Almost all of these major projects, and especially true of Federal medical programs, they always lowball the cost on the front end, and then the costs just explode after a time.

Yes, Mr. Valadao?

Mr. VALADAO. The one comment that has been made quite often is that they don't know or they don't expect more money to come to California. No one disagrees that L.A.-San Francisco has horrible traffic. From a Central Valley perspective, it doesn't make any sense why you would start the project in the Central Valley, if L.A.'s traffic is so bad. I have no problem with helping fix the traffic in L.A. Do something there, spend the money there.

Getting from where I live in Hanford down into L.A., if I wanted to get on Amtrak today, or if they built the high-speed rail, it would stop in Bakersfield. I would get off the proposed rail project, get on a Greyhound Bus, go over the Grapevine, then go into L.A. There is no connection there, there is no rail there.

You would think we would start by filling in some holes in our current system with newer technology, versus building a train literally right next to an existing train that we already have and we already lose money on. It just doesn't make any sense. If you are hell bent on spending money and building rail, start somewhere where we actually need rail. And that is what my biggest beef with this project is right now.

Mr. DUNCAN. All right——

Mr. VALADAO. Thank you.

Mr. DUNCAN [continuing]. Thank you very much.

Mr. DENHAM. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And I have been listening to all the debate and the concerns that they have. I must point out that most of the voters that vote for these things are in southern California. I would say two-thirds of the voters are there. Most of the impact that is against it is in northern California. So southern California really has a great deal of interest in what is going to happen to be able to move people. You have got L.A. County with 12 million people. That is almost a third of the voters in the whole State.

But we do need faster transportation in the North. I was in the Sacramento Assembly. And, Loretta, I hate to tell you, but I made it in 4½ hours to Sacramento from L.A.

Ms. SANCHEZ. Oh, yes—San Francisco.

Mrs. NAPOLITANO. Right. Well, and it is—it was one of those things when you travel, and there is nobody else on the road, or one or two cars, your foot gets a little heavy.

But there are concerns. There have been concerns with the Councils of Government in the areas where I am, in my former district and my new district, in regard to being able to work with them. And they have been addressing—the Authority has been addressing the concerns directly with the CoGs. So—and we are moving forward on those, because there are issues that they have. And it isn't the funding. It is if it is going to take away from the funds for local transportation projects, that is one of the main concerns that my Councils of Government have.

Now, that put into perspective, as Loretta was saying, we need to be futuristic in California. We are a donor State to the rest of the Nation in many areas. And so, if we are not going to be able to help move people or move goods, then we are not helping our State move into and keep the position we have. As Loretta said, when I was in the State legislature, it was the fifth world's largest economy. I think we have dropped a few.

But most of the concerns that we have are not going to be addressed by us speculating, until we know whether or not—and we will hear from the other panel, the upcoming panel, is whether or not they are already making inroads to be able to get outside investors to come in and help do, as in other areas.

Now, I understand—and I agree, Mr. Denham—there are great projects in other countries. But, guess what? The Government owns the land. Here, it is either privately owned or railroad-owned. And so, you have a lot of contentious litigation, whatever. But we must move forward.

And I would like to give Loretta a chance to be able to expound more, because I could represent L.A. County sort of, kind of, but you, in Orange County, you have a lot more.

Ms. SANCHEZ. Well, remember that we have an airport, John Wayne, which is at capacity. Some people would like to see—that is the airport, if you have ever been to it, where, when you take off, you take off like this, because our residents don't want to hear the noise.

So, we have a lot of limitations. We also have a lot of growth: 80 percent of the new trips that are going to be generated out of LAX are actually coming from South Orange County. I know this

because we had to fight for a second commercial airport that never happened, for example. I have been through these wars.

People are working. They are building companies in Orange County. They have got to go up to the Silicon Valley, they have got to go and get financing, et cetera.

Currently, however, the Authority is working with local agencies. For example, in Anaheim, where we will use the same rails that we currently have, we have this problem called grade separations, or lack of, where you stop the traffic because the train is going by. Well, you know, they are investing in making sure that we are making grade separations. Cars will either go under or will go over where the track is. So we are already going to see some help, with respect to the way people move. And this is one of the costs that is being borne by the Authority.

Mrs. NAPOLITANO. Well, one of the other concerns is that the cost to the ridership. And I have always been of the opinion it should be available to all residents that need to use it. Now, how we work it out, I think it is important for us to be able to understand that this is—one of the points that has to be taken up and discussed and addressed is the cost of a ticket. Because if it is going to be more than airfare, then it is something that we need to be able to—allow others to be able to have access to that form of transportation. The choice should be for everybody.

Ms. SANCHEZ. Congresswoman, certainly the cost is a concern to all of us.

I will say that when I go into L.A., if I can, I do take the Metrolink that we have, which, if you are a commuter, you can buy a set of tickets that makes it lower, et cetera. And you would—it is amazing, because, first of all, the people who take the Metrolink are surprised that the congresswoman is taking the Metrolink. It is a great way to travel up to L.A.

But secondly, I am surprised that it is not people with suit—with briefcases, et cetera, necessarily, that other people who 2 or 3 days a week commute into L.A., who I would say are not professionals as people typically think these commuter rails handle, are taking the trip. So we have made it manageable for many of them.

Mrs. NAPOLITANO. Thank you, ma'am. Thank you, Mr. Chairman.

Mr. DENHAM. Thank you. Mr. Williams?

Mr. WILLIAMS. [No response.]

Mr. DENHAM. Thank you. Ms. Hahn?

Ms. HAHN. Thanks. I think—and I will take a pass on a question, just because I think we need to get to the second panel. But, Mr. LaMalfa, where did "jump the shark" come from?

Mr. LAMALFA. Jump the shark is a saying that is a——

Ms. HAHN. Where did it come from?

Mr. LAMALFA. Grew out of "Happy Days."

Ms. HAHN. Very good.

Mr. LAMALFA. During the end of the——

Ms. HAHN. Which episode?

[Laughter.]

Ms. SANCHEZ. Number 31, second season.

Mr. LAMALFA. Fonzie, wearing a leather jacket while water skiing, jumping a shark.

Ms. HAHN. OK, fifth season, that is right. But, by the way, it was a phrase that meant to show a decline in a series, which was not the case for "Happy Days." So, really, that phrase was not used properly, which I also don't think we ought to use about the high-speed rail project. And I hope to hear from that on the next panel. Thank you.

Mr. DENHAM. Well, thank you, Ms. Hahn. I am sure that will end up in Politico today.

[Laughter.]

Mr. DENHAM. And certainly thank each of the Members for spending a little extra time with us this morning. Obviously, this is a very important issue, not only for California, but for the Nation. And so, we appreciate your time this morning.

I would now like to welcome our second panel of witnesses: Karen Hedlund, Deputy Administrator of the Federal Rail Administration; Dan Richard, chairman of the board of the California High-Speed Rail Authority; and Alissa Dolan, legislative attorney, Congressional Research Service.

I ask unanimous consent that our witnesses' full statements be included in the record.

[No response.]

Mr. DENHAM. Without objection, so ordered.

Since your written testimony has been made part of the record, the subcommittee would request that you limit your oral testimony to 5 minutes.

Welcome. And, Ms. Hedlund, you may proceed.

TESTIMONY OF KAREN HEDLUND, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; DAN RICHARD, CHAIRMAN OF THE BOARD, CALIFORNIA HIGH-SPEED RAIL AUTHORITY; AND ALISSA M. DOLAN, LEGISLATIVE ATTORNEY, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

Ms. HEDLUND. Chairman Denham, Ranking Member Brown, and members of the committee, thank you for this opportunity to speak with you today.

The high-speed and intercity passenger rail program is the largest grant program for passenger rail in our Nation's history. And it supports more than 150 projects in over 32 States. We are focused on executing high-quality projects that deliver tangible value for the taxpayers.

And California's high-speed rail project, like all of our projects, has received a very high level of scrutiny and oversight that reflects our good stewardship of Federal funding. The project has made significant progress, and continues today to move forward. The design-build contract for construction package one was awarded in August. Right-of-way is currently being acquired. Final design is progressing. And we anticipate utility relocation and building demolition to begin this winter, with significant construction activities to begin this spring.

As we address the project's short-term challenges, it is important for us to also recognize the fundamental reality that the Authority's phased approach is consistent with how major infrastructure projects have been designed and constructed, both here in

the United States and around the world. Each interim stage is projected to be self-sustainable on an operating basis. Each interim stage is projected to generate enormous public benefits. And by doing it this way, the Authority, the State, and stakeholders are in a position to be highly adaptable to challenges and changing conditions.

Furthermore, the data driving our decisionmaking progress reveals a clear need for California to move forward. Our data justifies the project's need. It identifies rail in California as the mode of opportunity.

And lastly, it foretells pretty ominous consequences, should the State fail to act. Choosing to do nothing is choosing to allow the producer of more than 10 percent of America's GDP to be paralyzed by clogged roads, by overwhelmed airports, and by rapidly diminishing air quality, all as, by 2050, the Central Valley population doubles and the State's overall population, as has been mentioned, swells to 60 million people.

On the other hand, to build transportation capacity, California needs an alternative to high-speed rail. As has been previously mentioned this morning, this would require building 4,300 miles of new lanes of highway, 115 additional airport gates, and 4 new airport runways. It is not only considerably more expensive; in many cases, geographic constraints would make it impossible.

High-speed rail is a necessary part of California's response to its mobility and transportation challenges. It will deliver tremendous transportation capacity and, at the same time, reduce greenhouse gas emissions. It will spur economic development and create thousands of jobs and, at the same time, relieve pressure and reduce wear and tear on our Nation's most congested highways and airports.

The challenges this project faces, including some of the opposition, are nothing new. Critics of the Golden Gate Bridge called it an upside-down rat trap. Some engineers believed the towers would never stand. They dismissed the whole thing as impossible to build. Meanwhile, as the project got close to breaking ground, opponents filed more than 2,300 lawsuits to stop it. And that was before the Environmental Protection Act.

Some question the revenue sources. Some even grasped at the issue of how the bonds would be used. In fact, later, historians would write that building the bridge was the easy part. The hard part was breaking ground. But, ultimately, the project did break ground, and during the Great Depression, at that. Can you imagine anyone today saying it would have been wiser not to build it? Can you imaging anyone today—can you imagine, today, if tens of thousands of drivers each day lacked a direct crossing into one of America's signature cities?

We have an opportunity to not only absorb these great lessons from the past, but to reclaim them as an essential feature of the American identity, and to accept our responsibility to do for future generations what previous generations have done for us. We will continue to work with the Authority as it updates its business plan, conducts environmental analysis, and develops a project we believe is critical to both California's future and to America's future.

And I look forward to discussing with you today how we can agree to work together to move this project forward. Thank you.

Mr. DENHAM. Thank you, Ms. Hedlund.

Mr. Richard?

Mr. RICHARD. Thank you, Mr. Chairman. Chairman Denham, Ranking Member Brown, members of this committee, I am pleased to be here today to discuss the status of the California high-speed rail program, our progress to date, and our prospects for the future.

Mr. Chairman, the subject of this hearing is a review of the challenges facing California high-speed rail program. I think what you have heard this morning from your colleagues and from Ms. Hedlund is that the kind of challenges we face are not new. We certainly do have challenges. We have engineering challenges, we have the challenge of protecting our environment, farmland, riparian zones, species, communities. And we have, as all major infrastructure projects have, funding challenges and some legal challenges, as well.

And, of course, this is not the first massive infrastructure project to face tests like these. As has been said, the generations before us built this country in the face of even greater uncertainties. And I would note, Mr. Chairman, that a project that you know better than anyone is of vital importance to our State, the California water project, which has provided sustenance to our farms and agricultural sector in the Central Valley, was highly controversial. It passed the legislature in California by a single vote. The Bay Area Rapid Transit System, where I once served as a director, similarly barely came into existence, again by a one-vote margin. But today it provides essential transportation service, and its replacement value was recently estimated at $30 billion.

My point is that these monumental infrastructure projects are difficult, contentious, belittled, fought, and questioned. And, yet, in retrospect, in virtually every case, we have determined that they are undoubtedly worth the struggle. We feel that way about the California high-speed rail project. This project is much more than a train. In addition to meeting rapidly growing transportation needs, high-speed rail will bring untold economic and environmental benefits to communities throughout our State.

In approving the program, the California Legislature unleashed $13 billion of statewide transportation modernization improvements that are all tied to the high-speed rail program, but reach into every portion of our State. In places like Fresno, Palmdale, and other cities, we see already local leaders envisioning revitalized downtown areas, anchored by the high-speed rail transit hubs. In fact, we anticipate creating as many as 20,000 construction jobs during each of the first 5 years of the project. And once operational, the initial operating segment will directly employ at least 1,300 workers.

Mr. Chairman, we have made tremendous progress towards delivering these benefits to Californians. Our design-build contractor is firmly ensconced in the downtown historic Fresno area, bringing 65 full-time jobs to that region, already. They are currently focused on acquiring properties and equipment, finishing design work, doing utility relocation, archeological work, permit finalization, and geotechnical surveying.

And, since the last time I appeared before this subcommittee, we have strengthened our agreements with the Merced and Madera County Farm Bureaus for the protection of agricultural lands, with the San Joaquin Regional Rail Commission for improving the ACE Train service, which is vital to central California and with the California Department of Veteran Affairs for employment of veterans and the utilization of veteran-owned businesses. We want the benefits of this program to reach every Californian.

I know this hearing will address some recent developments, including a November California State court opinion, and we will be prepared to discuss those. But I can say to you that in concert with our Federal funding partners, we will address these matters expeditiously, maintain the momentum of the program, and we will continue to meet our matching fund obligations.

At the same time, the committee should note that, to date, approximately $100 million of State funds have already been spent, and that we anticipate fully participating in this project with the Federal Government for the entire amount that was appropriated.

Mr. Chairman, you also know that last week Governor Jerry Brown released his new budget for the coming year. And, in so doing, he included a proposal to allocate revenues from the State's new cap and trade greenhouse gas emission program to the California high-speed rail program. We believe this $250 million in the coming fiscal year, if approved, will portend a long-term, sustained effort, which combined with the bond funds and the Federal funds, can help us build all the way to the gates of Los Angeles within a decade, and that will change things dramatically.

Finally, I would like to thank you again for the opportunity to provide the committee with an update.

And I would like to close with these words from Governor Brown, as he described his commitment to the California high-speed rail project. And he said—and I quote—"No big project, whether it was the Golden Gate Bridge, Transcontinental Railroad, or the Panama Canal, was free of very strong criticisms, skepticism, and attack. That goes with the territory. This is a big project. It was started by my predecessor," the Governor said, "something that I proposed and talked about when I was Governor the last time. There is no doubt that California will have millions more people coming to live in this State. Many of them will live in central California. We cannot add more freeway miles, particularly when we already saw 331.8 billion vehicle miles traveled last year. We need alternatives. And transit and high-speed rail are part of that mix. And the program that I have set forth," said the Governor, "strengthens the local rail, the commuter rail between San Francisco and San Jose, and in the southern California area. It reduces greenhouse gases. It ties California together. The high-speed rail serves all these functions, and that is why I think it is in the public interest."

Mr. Chairman, we look forward to continuing to work with the subcommittee and all stakeholders to ensure that the Nation's first true high-speed rail system is built correctly, cost effectively, and in the best interest of the Nation's and California's taxpayers. Thank you, sir, and we look forward to answering questions from the committee members. Thank you.

Mr. DENHAM. Thank you, Mr. Richard. And I would also say I appreciate when we had talked back in December, you asked me to delay this hearing, as well. I asked you to make sure that you could be here today. You did, and I appreciate that.

And would just also remind you, Mr. Brown's—I believe in his comments, because next year's budget he is anticipating $20 billion coming from the Federal Government to fill that funding gap. That is in his—we would have that up on the screen, but our screen, I guess, is broken. So we will hand that out to others. Thank you.

Ms. Dolan, you may proceed.

Ms. DOLAN. Thank you. Chairman Denham, Ranking Member Brown, and members of the subcommittee, my name is Alissa Dolan, and I am a legislative attorney in the American Law Division of the Congressional Research Service. I thank you for inviting CRS to testify today regarding the legal issues associated with challenges facing California high-speed rail. I will be discussing two recent California Superior Court cases and specific provisions of the cooperative grant agreement that exists between FRA and the California High-Speed Rail Authority.

The first case I will discuss is *Tos* v. *California High-Speed Rail Authority*, which is a suit that was brought by Kings County, California, and two taxpayers who reside therein. The plaintiffs alleged that the Authority's funding plan did not comply with the statutory requirements contained in Proposition 1A. Specifically, the statute requires that the funding plan, one, identify the sources of funds for the corridor, or usable segment thereof, defined in the plan as the initial operating section, or IOS; and, two, certify that all project-level environmental clearances needed to proceed to construction have been completed.

The court ruled in favor of the plaintiffs on these claims. It held that the funding plan did not comply with Prop 1A because it only identified funding sources for a portion of the IOS, and did not certify that all environmental reviews for the IOS had been completed. The court issued a writ of mandate, ordering the Authority to rescind its approval of the plan. It appears as though the Authority will have to approve a new funding plan that identifies sources of funds for the entire IOS, and certifies the completion of all environmental clearances before the Authority can proceed towards spending bond proceeds.

The court also noted that this case had no direct bearing on the Authority's ability to expend Federal funds, which are not governed by Prop 1A.

The second case is a validation claim that was brought by the Authority and the High-Speed Passenger Train Finance Committee, a body that was created in Prop 1A to approve the issuance of bonds. In this claim, the Authority and the committee sought to validate the committee's March 2013 approval of the issuance of Prop 1A bonds. A successful validation claim would prevent future suits that challenged the legitimacy of the bonds.

In this case, the court refused to issue a validation judgment, because the Finance Committee did not provide substantial evidence that it complied with the statute requiring it to decide that bond issuance was necessary or desirable. The court found no evidence in the record to support the Finance Committee's decision. The

record contained no explanation of how or on what basis the committee decided that bonds were necessary and desirable in March 2013, and no summary of the factors that were considered.

Therefore, the court denied the Authority and the Finance Committee's request for validation. By statute, they have 30 days to file an appeal. However, representatives of the State have signaled that they will seek to restart the validation process, in order to obtain a validation judgment before issuing Prop 1A bonds.

Finally, I will discuss the cooperative agreement that governs Federal grant funds awarded by the FRA to the Authority under the American Recovery and Reinvestment Act, or ARRA. Under the ARRA agreement, the Authority must provide matching funds that cover approximately 50 percent of the project costs. The agreement does not require these funds to come from a specific source, but recognizes that the Authority plans to use Prop 1A bond funds.

Currently, the agreement allows the Authority to spend Federal money without concurrently providing the required matching funds. This advanced payment method expires on April 1, 2014, or at the time of a Prop 1A bond sale, whichever is earlier. After that date, Federal funds will only be available via reimbursement for expenses already incurred. Since the current agreement requires the Authority to begin spending matching funds in April 2014, it does not appear that the Authority's failure to obtain bond proceeds or secure other matching funds has led to a violation of the cooperative agreement at this time.

The agreement also establishes FRA's rights if a violation or anticipated violation of the agreement occurs. The FRA may choose to suspend or terminate all or part of the grant funding provided under the agreement under several circumstances, including if the Authority violates the agreement, or if the FRA determines that the Authority may be unable to meet the contributory match percentage, and complete the project according to schedule.

Additionally, under these circumstances, the FRA may also require the Authority to repay all or part of the funds it has received.

This concludes my prepared statement. Thank you for the opportunity to appear before the subcommittee, and I will be happy to answer any questions you may have.

Mr. DENHAM. Thank you. Ms. Hedlund, back in December I had a discussion with Mr. Szabo, I had a discussion with Mr. Richard about holding this hearing. We obviously wanted to hold this hearing in December, after the court ruling on November 25th. I understand that this hearing held in December, with the catastrophe with Metro North, would have been untimely.

So, out of professional courtesy, after the request from Ms. Brown, we delayed this hearing to accommodate everybody's schedules, and give plenty of time to answer questions and provide staff information that we detailed out in several letters. Now, that has put this committee behind. We obviously wanted to have a rail safety hearing already. We wanted to have it today. We will still plan on having a rail safety hearing. I want to make sure all of our Members know that.

But we asked you for specific information. I sent a letter December 12th asking for information that Mr. Szabo and I discussed on the phone call that he would provide, not only answers to my ques-

tions, but he would provide invoices. Four weeks later, we didn't have any of the questions answered, we didn't have any of the invoices. And now he can't be here today.

So, we sent another letter, again, asking for those invoices. We have had staff make multiple phone calls on these invoices. Now, this is an administration that the President said, "We are the most transparent and ethical administration in U.S. history." It doesn't say we are the most transparent, except for FRA. And yet we can't get invoices?

Do you have these invoices?

Ms. HEDLUND. Yes, sir, we do. But let me first state, on behalf of Administrator Szabo, he very much regrets not being able to be here today. Frankly, he understood the safety hearing was going to be yesterday, and would have been available yesterday for that hearing. Today he has both business and personal issues that he needed to deal with.

Mr. DENHAM. And your testimony is more than fine today. I know that you are very knowledgeable, you are very capable. We respect your expertise. But whether it is Szabo or you, we expect answers. This committee expects the cooperation to have those invoices presented to it.

Ms. HEDLUND. Mr. Chairman, we wanted to have further conversations with your staff about the least burdensome way we could respond to——

Mr. DENHAM. You have had 4 weeks to work on that. We could have had those conversations. And certainly, if it is boxes of invoices, we would have been able to accommodate that over the holiday break. I think there was some staff that had plenty of extra time, with such a long break.

Ms. HEDLUND. It was over the holiday. But be that as it may, we have provided your staff with significant information with respect to all the invoices that were paid since the decision came down. We have provided a breakdown of all invoices that have been paid from the inception of this project——

Mr. DENHAM. The $275 million that has been spent so far, we have received invoices on?

Ms. HEDLUND. No, you have received a breakdown, by task order, of the amounts that have been spent, both by the Authority and by FRA——

Mr. DENHAM. Is there a reason that we can't see specific invoices?

Ms. HEDLUND. Sir, we are more than happy to meet your demands, and—but we would like to——

Mr. DENHAM. You haven't met them to date. We have had 4 weeks to work on this. And if there is specific information that you need from our committee, we have had 4 weeks to work on it. We have had phone calls. Mr. Szabo and I have exchanged several phone calls, and we provided several letters. If there is any question on what we are asking for, whether it is you and I or whether it is staff, I would assume that those questions can be answered, so that we can get these invoices in a timely manner.

Ms. HEDLUND. I think we should work with you on how we provide you the information that we have that you have asked from us. We are committed to being completely transparent. There is

nothing that we have to hide, or that the Authority has to hide. We are trying to get——

Mr. DENHAM. That is the real question. What are you hiding? This is—the administration—the President has said several times, "This is the most transparent administration in the history of our country," yet it has been 4 weeks, several phone calls, and a couple of letters, and we have still not received any invoices.

In fact, what we have received, over the $275 million to date that has been—that has come in, we got that information from our Democrat counterparts. Now, I appreciate—this is a bipartisan committee, and we are working together. But what are you hiding that we have to get information—do you only share transparency—let me see one of these other quotes. "My administration is committed to creating an unprecedented level of openness in Government." Only with Democrats. No, it doesn't say that. It says, "My administration is committed to creating an open—unprecedented level of openness in Government."

The most transparent administration in history, not just to Democrats, but to both, to—a bipartisan committee of Congress, yet we can't get these invoices. When will we have these invoices? That is the question.

Ms. HEDLUND. We will discuss that with your staff, and talk about——

Mr. DENHAM. What do we need to discuss? Is there a reason that we can't send somebody over to pick up invoices today?

Ms. HEDLUND. I do not know, sir. I can't answer that question. We are talking about a process of turning over information. We need to have further discussions——

Mr. DENHAM. You have had 4 weeks. How much more time do you need before we can send somebody over to pick up information?

Ms. HEDLUND. We will talk to your staff about how we can turn over the information you are looking for.

Mr. DENHAM. A week?

Ms. HEDLUND. I can't tell you.

Mr. DENHAM. A month?

Ms. HEDLUND. I——

Mr. DENHAM. This is the most transparent Government in our U.S. history.

Ms. HEDLUND. We agree——

Mr. DENHAM. Do you need 2 months? How much time do you need to have our staff go over and pick up invoices?

Ms. HEDLUND. There are thousands of documents, sir.

Mr. DENHAM. How about every invoice over $100,000? How many documents is that?

Ms. HEDLUND. I have no idea.

Mr. DENHAM. I assume that is a smaller amount. Is there any reason why the FRA can't put together every invoice over $100,000?

Ms. HEDLUND. I—you know, the invoices that we get from the Authority are a combination of invoices that they get from their contractors.

Mr. DENHAM. Look, I am not concerned with the combination——

Ms. HEDLUND. That is why——

Mr. DENHAM. I am not concerned where they are, or what is in them. What I am concerned about is an agency that is hiding information from Congress. We are a congressional committee that is overseeing this project, and you cannot provide us information.

Ms. HEDLUND. Sir, we are committed to give you all the information that you——

Mr. DENHAM. So when can we get this information?

Ms. HEDLUND. I can't say that today, exactly what it will take for us to provide the information that you are seeking. But we will certainly be as cooperative as possible.

Mr. DENHAM. Well, you have not been cooperative. You have not given us the information over the last 4 weeks. That is what this committee will be demanding, is—at least in the short term—every invoice that is over $100,000.

My time is expired. I now—Ms. Brown?

Ms. BROWN. Thank you. Mr. Richard, I am interested, since you have a billion of my dollars from Florida, to tell us what we can do to expedite the process in getting the project done. For example, we have had lots of discussions about one stop permitting. What can we do to help you and assist you?

I mean, obviously, the Congress, you know, even this committee, we are on various tangents. My goal is to make sure that we have true—we have high speed. And there is a discussion about what is high speed. But when I go to Europe, I can go 200 miles from downtown Paris to other European capitals in 1 hour and 15 minutes. And that is the goal, to move people, goods, and services.

You know, the Congress is on a different kind of tangent, obviously. So can you tell us what we can do, as a Congress, to help you all?

Mr. RICHARD. Congresswoman Brown, first of all, thank you very much, both for your support and for that question.

And you are right. In Europe and those places where you've traveled, they are true high-speed trains. I know there has been some commentary on whether that is what we are building, but that is what we are building: a high-speed train that will go more than 200 miles an hour and be fully electrified and clean, and so forth, exactly what the people of California and the people of the United States want to see.

To answer your question directly, I know that this is a controversial project. But if we can find ways to come together and talk seriously about this project and what its objectives are, to the extent that the private sector sees that there is an ongoing commitment, both from the State of California and the Federal Government, that will accelerate private-sector money into this project.

I know the chairman has been very concerned, as has been the concern of all Members, to see if we can find a way to leverage public dollars with private-sector dollars. Madam Ranking Member, we estimate that $20 billion of private-sector dollars would be coming into our project, based on the revenues that would be generated. That is a lot of money. What they are waiting to see is the first piece of this built and a commitment going forward.

In fact, just yesterday, at our monthly meeting of the California High-Speed Rail Authority, a representative of one of the largest infrastructure builders in the world, from Spain, stood up and said,

"We see what Governor Brown is doing with his commitment of money from cap and trade. This type of long-term commitment is creating excitement and generating more and immediate interest on the part of the private sector."

So, Madam Ranking Member, I really believe that if we can come together around this project, we can achieve these objectives of leveraging public dollars with a lot of private-sector money.

Ms. BROWN. Thank you. Would you like to respond and explain the Federal role in making sure that we are spending taxpayers' dollars properly? Do you want to expound on that? I mean——

Ms. HEDLUND. We engage in all of our projects in extensive oversight and monitoring of the expenses. We do detailed reviews, desk reviews, on-site reviews. And every single payment, reimbursement, that we make to a grantee is subject to audit. So, even if, after the fact, some question is raised about the propriety of a specific expenditure, we can recapture that.

Ms. BROWN. CRS, do you want to respond, as far as taxpayers' dollars are concerned?

Ms. DOLAN. I will decline to answer any questions that deal with policy. So I think, as—from the legal standpoint, you know, the FRA's relationship to the Authority is set out in the cooperative agreement, and they have certain rights under that agreement. And as far as the way that that agreement is written, the FRA has the responsibility at this point to make decisions on how to proceed.

Ms. BROWN. OK. I wasn't aware that I was asking you a policy question. But let me just make a statement: I think that—and I have said it before—I think certain Members in this body need to run for Governor of California, need to run for the State legislature in California or the State senate in California. We have a bigger role here. We are interested in California, but we are interested in the entire country. Yes, interested in how we can move our country forward.

We are stuck on stupid. We are not investing any money. Eight billion dollars, not a dime—and proud of it—not a dime for high-speed rail. But when I go to other places, they are moving forward. They are moving forward. And we are left behind. I am talking about third-world countries moving ahead and leaving us. Third-world countries have intermodal airports. I mean, I don't understand why we don't understand the importance of moving people, goods, and services. We are becoming a third-world country, while we sit here and argue about nickels and dimes.

Mr. DENHAM. Mr. Webster?

Mr. WEBSTER. Thank you, Mr. Chairman. Mr. Richard, which segment—OK, I don't know much about California, except just somewhat where the cities are. Which is the segment that you are building first?

Mr. RICHARD. Congressman, first of all, we would welcome you to come visit and see what we are doing. The segment that we are actually building first is in the Central Valley of California, but simultaneously we are making investments in our urban areas in San Francisco and Los Angeles. We are building the spine of the system in the Central Valley. This is an intercity rail system, and so it is going to connect the great regions of our State.

Mr. WEBSTER. So how long is that segment?

Mr. RICHARD. The segment that we are building will be 130 miles through the Central Valley, and that will go from north of Fresno, which is right in the center of that region, to Bakersfield, which is in Congressmember McCarthy's district.

Mr. WEBSTER. What is the projected passenger travel per day, or——

Mr. RICHARD. So, Congressman, this gets into the issue of how we are building in a stair-step fashion.

Mr. WEBSTER. Well, just in this segment. I am just—if we are talking about the——

Mr. RICHARD. Right. That segment is what we have the funds to build today. And that is not going to be a segment where we are going to be able to start full high-speed rail service.

So, what we are going to do in the interim is to upgrade the existing Amtrak service on that segment while we clear the environmental process and put the funding package together to get to the next segment, which is over the mountains to a community of Palmdale, right at the edge of the Los Angeles basin. That is where I think we will be able to start to operate.

I will tell you that it surprises a lot of people, but, today, three of the top five Amtrak ridership corridors are in California. And the Central Valley segment where we are building right now is the fifth most used Amtrak corridor, with more than 1 million trips per year. So there is substantial ridership in those communities. And as we move to transition up to high-speed rail level service, we expect to see, ultimately, between that area and Los Angeles, about 2.2 million trips, just in the first year, to start, as we get into the Los Angeles basin. So it is significant.

Mr. WEBSTER. So, what I—I just heard a lot of numbers flying around here, 8 million passengers, you know. What kind of—I just want to see what kind of impact it was going to have on the traffic, air traffic, even the bridge that was mentioned. That has——

Mr. RICHARD. So——

Mr. WEBSTER [continuing]. 60,000 cars a day on it. You know, is that going to—that is certainly a different kind of project than this. This would be far less than that, as far as people moving. I am just trying to get an idea.

So—but that is not going to be high speed. It eventually will. Is that what you are saying?

Mr. RICHARD. Yes, sir. Absolutely. As the GAO noted, when it was asked by several Members to review our project, a project of this size can only be built in phases, and that is what we are doing. Our approach is to make sure that each phase is usable, as we build it. Then, as additional phases are added, the whole system gets better and better and better.

But our Central Valley in California right now suffers from tremendous traffic and serious environmental issues. The air basin is very bad there; 21 percent of the kids have asthma. It is actually one of the poorest areas of our State, in addition to having some of the great wealth from our agribusiness communities. And this is an area that has been left behind in investment in California for years.

So, our first $6 billion—half from Federal funds, half from the State—targeted to that area, is going to have immediate benefits in terms of employment, air quality, transportation, and mobility. And it is the spine of the system that we are building that is ultimately going to connect the entire State.

Mr. WEBSTER. What does the ridership produce, as far as operating cost, in just that segment?

Mr. RICHARD. Under our bond act, Congressman, we are not allowed to operate high-speed rail with a subsidy in California. And that is the crux of the issue.

Because everywhere in the world, once high-speed rail is built, it generates enough money to operate without needing a public subsidy. And our projections are that we will be able to do that, too. Not on that first segment, which is why we will probably use it for upgraded Amtrak service. But as we get over the mountains to Palmdale, and to connect to L.A., we believe we will be able to start operating without a public subsidy. In other words, our high-speed rail will cover its costs, and that will trigger further private-sector investment that will help build out other portions of the system. So that is the approach we are taking.

Mr. WEBSTER. Thank you very much.

Mr. RICHARD. Thank you, sir.

Mr. DENHAM. Thank you, Mr. Webster. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. It is really interesting to hear some of the information. But I—Mr. Richard, what—because I know there is going to be some grade separation improvements. And, as I have mentioned before in this subcommittee, that in my area there were 54 grade crossings, and only 20 are going to be separated. So some of the investment is going to be in helping the communities be able to deal with the impact it would have on its traffic. And, of course, you are talking about improving the infrastructure of the rail lines, which, of course, have been sadly in need. We talk about not funding infrastructure repair, that we are so back—and bridges and dams and railroads, and all of that.

So, all of that said, I think we need to have more information from the Authority to the general public about the benefits it brings, besides being able to do the connection and the choices of travel for folks and eventually into the L.A. area.

We talk about Palmdale, going into Palmdale. How—what is the connection between there and Los Angeles?

Mr. RICHARD. Congresswoman Napolitano, in the first phase, part of the appropriation from the California Legislature is to upgrade the Metrolink line from Los Angeles to Palmdale. So there will be near-term improvements in that service. That service right now has about 1.2 million riders per year. As you know, it is very well-traveled. We will be improving the travel time, straightening part of the track, and doing grade separations there. Those things will provide immediate benefits for the Metrolink service between Los Angeles and Palmdale.

Mrs. NAPOLITANO. Well, I am not opposed to the high-speed rail, at all. I just want to be sure that the communities that I represent, and the rest of the county, is aware of the plans that the Authority has for the area, and how the impact is going to be on those com-

munities, themselves. And I think I shared that with you, and I hope to be able to continue working on that.

Ms.—I would yield to Ms. Brown.

Ms. BROWN. First of all, I would like to make some breaking news. I would like to clarify that the Democrats on this committee, members or staff, are not getting any information that the Republicans have not been getting. I want to be clear: We have not gotten any information.

Secondly, for the Deputy Secretary, in light of the two recent court decisions that we have heard about this morning, is the Authority currently meeting its obligations to FRA, or are there any violations of the agreement?

And my second question, have either one of these lawsuits stopped the projects?

Ms. HEDLUND. Thank you, Ms. Brown, for giving me an opportunity to clarify that issue. As our learned counsel from the CRS has pointed out, the Authority is not in violation of the cooperative agreement as a result of its inability to access bond funds at this time. The Authority is in the process of developing a plan to address concerns raised by the court in pursuing supplemental funding sources, and you have heard the chairman of the Authority today, that they are committed to meeting their matching fund obligations under this agreement.

With our Federal investment secured by strong protections in our grant agreement, we are working with California on a path forward that best serves the interests of the American people. And with these strong protections in place, any premature adverse action on the part of the Federal Government would not serve the taxpayers' interest, because it could delay project delivery and cause the Authority to incur substantial contract damages and other costs that could needlessly increase the ultimate cost of the project to the taxpayers by millions of dollars.

Ms. BROWN. You want to add to that, Mr. Richard?

Mr. RICHARD. Yes, Congresswoman. I want to reaffirm what I said before. We are meeting our obligations. We will continue to meet our obligations.

When we negotiated this last grant agreement amendment with the Federal Government, it allowed us to access Federal funds ahead of State funds. And I would like to emphasize that was just good business. The Congress, in its wisdom, set a deadline on the use of the stimulus money of September 2017. We were facing a situation where, in order to use the Federal funds in time, we were going to pay about $180 million of acceleration fees to our contractor to get them to go faster. We have saved that money now, because of the cooperation and the work that we have done with our Federal funding partners. It was good business.

But, at the same time, Ms. Hedlund and her colleagues negotiated a very strong agreement that went through all kinds of "what-if" questions. They anticipated that there might be a problem like this. The agreement, by its terms, says the State intends to pay back the difference with bond money. But if they can't, there will be other monies, and other monies, and ultimately, Federal protections, as was described by Ms. Dolan.

So, we feel that the Federal taxpayers are fully protected. The State of California recognizes its obligation to match the Federal commitment. We are doing so, and we will continue to do so.

Ms. BROWN. Thank you, sir.

Mr. DENHAM. Thank you, Mr. Richard. Mr. Williams?

Mr. WILLIAMS. Thank you, Mr. Chairman. And I want to thank all of you for being here this morning. Appreciate it.

I am from Texas. I am a business guy for 42 years, and I am a big believer in the private sector. I think the private sector is the biggest, the best partner anybody can have. And they get it done right, much better, in most cases, than the Federal Government.

But just last week Secretary Foxx was in my State, in San Antonio, announcing an agreement between the Federal Railroad Administration, TxDOT, and the Central Texas Railway, to prepare two environmental studies that will lay the groundwork for high-speed rail between Dallas/Fort Worth and Houston. And I must tell you, I personally look forward to seeing the results of that Department's work, and—with our State, on the project.

Now, in preparing for this hearing, I was struck by the stark difference between the work that has been done in Texas and that that you describe that is being done in California. Most glaring to me is the private-sector involvement. In Texas, I understand there is a lot of private-sector interest and backing, but I don't see any of that, that you are talking about. You have touched a little bit on it, but we don't see any of that in California.

So, Mr. Richard, I would direct this, my first question, to you. How much private-sector money do you have in hand for all this project? Now, I heard you talk a little bit about that. But what do you have on hand now that shows you are aggressively going after the private sector?

Mr. RICHARD. Congressman, thank you for that question about the private sector. Let me just say, sir, that this is actually a part-time job for me, being the chair of the California High-Speed Rail Authority. It is sort of a full-time part-time job. In fact, I have spent much of my career in the private sector, including infrastructure finance. And so I share your view that the private sector brings innovation and efficiency.

And, indeed, our business model for high-speed rail in California anticipates that it would be operated by the private sector. This is not going to be a public-sector railroad. Our business model is to have initial investment, and then to auction the rights to the private sector to come in and build and operate on that system. They would be the operators. That is a model that has been used successfully around the world. I am sure that that is what they are looking at in Texas. So we are going to follow that model.

Sir, we have had extensive conversations, not only with private-sector entities in this country, but with sovereign funds and private-sector builders and operators from around the world. There is no question there is going to be extensive private-sector involvement in California high-speed rail. The only question, Congressman, is when. Our view is, as we talk with them—and we would be happy to share this with you and your colleagues—that they want to see certain things first.

It is a question of how they price the risk. If we bring them in too early, it could be very costly for us. If we can effectively use public dollars first and show a ridership base, then we have got something much better to sell to them, and we can generate a lot more private-sector dollars.

So, we think that we are working very well with the private sector. I would like to point out that when Governor Brown appointed me, he also appointed a fellow named Mike Rossi, who was the former vice chairman of Bank of America. Mr. Rossi sits on the board of Cerberus and other financial companies. He has extensive finance experience. Together, we have laid out an entire financial approach to this project that we think will maximize private-sector involvement.

We don't have those dollars in hand today, but that is because we believe that it is proper to use the Federal stimulus dollars first, and then lever up the private-sector dollars afterwards.

Mr. WILLIAMS. Well, with that in mind, as—what I understand, as I have listened to this, even before the stimulus money came out, you all turned down an offer from the private sector to help build this project. Can you explain that offer? And can you speak on why it was turned down?

Mr. RICHARD. Congressman, I am aware of the situation you are referring to. It predated my time on the California High-Speed Rail Authority. But what I understand was that a company that has operated the French railroad, SNCF, made a proposal at one point to the California High-Speed Rail Authority to simply take over the project. It is also my understanding that that offer did not come with any dollars attached to it. They just said, "You know, we can come in and take this over."

To me, that would basically be the same as saying, "Well, why don't we let Airbus come in and run our airports?" I'm not quite sure that the jetways would fit the Boeing airliners at that point. So we wanted to have an open-source project. We didn't want to turn it over to just one company, particularly when there was no financial commitment associated with that proposal. If they had brought dollars to the table, it might have been a different conversation.

But that is my understanding of the history, sir. And, if you are interested, I am happy to provide more information.

Mr. WILLIAMS. I think you should provide that information, let us see that.

Mr. RICHARD. I would be happy to do that, sir.

Mr. WILLIAMS. And also, talking about the model in Texas, I note that the Texas Central has been speaking with STB throughout their process, to ensure that they check all the boxes they need to, and they don't get hung up anywhere.

You all, however, didn't apply for the necessary STB authority until after Chairman Denham asked you to look into it. Is that correct?

Mr. RICHARD. That is absolutely correct. We had thought that we did not need to go to the STB until we started operations. Upon assuming the chairmanship of this subcommittee, Chairman Denham told us that he did not agree with that view. We told him that we respected that position, and we immediately went to the

Surface Transportation Board to put the question to them. They determined that we were under their jurisdiction, and we have proceeded apace since then. But you are absolutely correct, Congressman.

Mr. WILLIAMS. Well, you think if you discussed it with them before, and supposedly applied on time, that you would not have had to ask for approval to be—to have the process affected?

Mr. RICHARD. Congressman, my understanding is that once we applied, the application went through the normal process at the STB.

A few months ago, for the next leg, we asked the Surface Transportation Board if they wanted to bifurcate our application and deal with the transportation issues first and the environmental issues second, in order to meet time schedules. They told us they didn't feel the need to do that, that they felt that their process would work just fine, and we accepted that judgment.

Mr. DENHAM. Thank you, Mr. Williams. Ms. Hahn?

Mr. WILLIAMS. Yield back.

Ms. HAHN. My turn already? It is only 2 hours. So it is 2 hours into this hearing. Pretty much everything has been said. But everything hasn't been said by everybody, so I am going to say it. And, as co-chair of the California High-Speed Rail Caucus, I am a strong supporter of bringing high-speed rail to California.

We are behind the rest of the world. China has built more than 6,000 miles of high-speed rail track since 2008, and is investing more than $100 billion in high-speed rail. Japan and France have also made substantial investments. In California, our transportation system is at its limit. Our highways are jammed. L.A. to San Francisco is the second busiest air route in the country, and faces constant delays because of their weather. We need another option, and I think that is what high-speed rail is for California.

It is true that the Authority has had a lot of challenges. It needs to quickly and effectively and—address, so that we can ensure that this project moves forward. I hope that, at some point, we can begin to talk about the serious impact that this project is going to have on some of the communities, and how we might mitigate that. But let's not pretend that these challenges are insurmountable, and that we haven't faced similar challenges before. Everybody has been talking about it.

The great California water project, which, by the way, when it was introduced, only passed the legislature by one vote. And today, it provides drinking water for more than 23 million Californians annually. Nobody is going to question that.

The New York Times talked about when the Golden Gate Bridge was in development, it had 2,300 lawsuits before it was built. So, again, nobody is discussing whether or not that project was worthwhile.

I believe this is worthwhile. When we talked about 15 million residents residing in California, you know, I hope that these are the kinds of projects we are dreaming about and thinking about and planning for.

I was disappointed one of my fellow California Members, Mr. Valadao, was more interested in dealing with the population by building more prisons. You know, I don't think that is the future

of California. I think we need to be innovative and big thinkers. And you know, with the jump the shark comment, you know, we both had knowledge of "Happy Days." The problem is that episode was in the fifth season. It went on for 11 more seasons. So, even the way people use that comment to describe a project that is declining, or that is relying on gimmicks to keep attention on it, was used improperly. I think we are in season 1 of the high-speed rail, and I think we have got at least 11 seasons that are going to be strong and problematic.

And I hope we, as Californians, can come together and talk about the problems, and talk about the solutions. And I hope, Mr. Denham, your line of questioning is more about tough love than, you know, about shaming and punishing a project that I think will mean a lot to California. And I think we ought to be fighting together to bring Federal resources to California, not trying to oppose Federal resources.

So, Mr. Richard, a couple things have been talked about. You have been accused in this hearing of having phony numbers with your ridership and your business plan and your financing. Can you address some of that?

And also, one of the things I am interested in is the Governor's proposal to offer the $250 million in cap and trade. Is that legal? What does our legislative analyst say, whether or not we can use that? Is $250 million even close to what we are going to need to fill the gap? And how do we plan to fill the gap in this project, which I think is one of the greatest projects that we have seen in this country in a really long time?

Mr. RICHARD. Well, Congresswoman Hahn, thank you for those comments and questions. Let me just quickly address the issue on the use of the cap and trade money.

The Governor did propose in his recent budget to use cap and trade money for high-speed rail. But this has been talked about for several years. In fact, going back to the commencement of the greenhouse gas reduction program by the California Legislature, early on, the California Air Resources Board put out a scoping plan, talking about the types of strategies they would have for meeting the target reductions. California high-speed rail was included in that early scoping plan. So, from the very beginning, the Air Resources Board saw this project as having major benefits for helping us meet our goals of reducing greenhouse gas emissions to 1990 levels.

Now, it is true that the legislative analyst of the California Legislature came out this week and said that they thought that this was not necessarily consistent with the law, I think the term they used was a "legally risky strategy." But the problem with that conclusion is that it was based on two assumptions, both of which are not correct.

The first assumption was that the legislative analyst assumed that there wouldn't be benefits before the year 2020, as contemplated by the law. But, in fact, there will be tremendous benefits. Because of our cooperative agreements, we are going to be electrifying the Caltrain commuter rail system. That, itself—and that is going to be in place by 2018 or 2019 and reduce 18,000 tons

per year of carbon emissions immediately, just for that train system there.

The second assumption was that we would generate greenhouse gas emissions during construction. As far as construction in the Central Valley goes, we are committed—and we are required, under the environmental processes—to a zero impact construction. The equipment that is being procured right now is called Tier 4 equipment, which has the lowest possible emissions. We have required the contractor to recycle all steel, all concrete, to take care of all those materials, so that they don't go into landfills. And landfills themselves generate greenhouse gas emissions.

My point is there are immediate and durable benefits that are being provided through this program.

Mr. DENHAM. And we will be having a couple more rounds.

Ms. Hedlund, I appreciate that in all efforts for it to be transparent, you will be providing those invoices. Our staff looks forward to having those conversations and getting those in a timely manner. But let me ask you a little more about the lawsuit and what is happening right now with California, as it pertains to our Federal tax dollars.

So, is it accurate that FRA has not changed any policy or procedures related to the grant since the court ruling?

Ms. HEDLUND. We have not—I think that is accurate. We have not made any change to the grant agreement since the court ruling.

Mr. DENHAM. So even though a court has made the decision that there is no State match at this time, FRA is not taking any separate precaution on Federal tax dollars?

Ms. HEDLUND. I would not agree with your characterization, sir, of the court's decision. The court decision—and I am a little reluctant to discuss a litigation to which we are not a party, but you have been advised by counsel to the CRS—the court decision did not say that the funds would never be available. It said that the Authority has to——

Mr. DENHAM. It said "currently," which——

Ms. HEDLUND. They——

Mr. DENHAM [continuing]. Is your responsibility, watching over the taxpayer dollars. You have a fiduciary responsibility to make sure that, under the Antideficiency Act, that you are going to receive your 50 percent match coming back. So, currently——

Ms. HEDLUND. I don't——

Mr. DENHAM [continuing]. The court decision has said—so the question is, have you made any changes? And who has actually made this decision? Did it go up to DOT? Is the White House aware that the FRA is not making any changes in its current procedures?

Ms. HEDLUND. We are in discussions with the Authority about their plans to continue to meet their obligations under this agreement. They have not failed to meet their obligations. As far as we can determine to date, they have said they will continue to meet their obligations. And so, we are going to continue to talk to them about this.

Mr. DENHAM. Ms. Hedlund——

Ms. HEDLUND. But we have not made a decision.

Mr. DENHAM. A court has made a ruling. Today, currently, there is no State match. Now, the courts have said Prop 1A cannot be used, the $9.95 billion cannot be used under the current system. And April 1, $180 million is going to be owed back, by your numbers, by your request, on that State match.

So, I understand the Governor has been very creative, $250 million for the cap and trade dollars. But as I served in the State legislature, that vote has to be done by the legislature at the end of the fiscal year. Most of the time they are late, meaning July or August. How do they meet the April 1st deadline, if it is even constitutional to do cap and trade, and if both liberals and conservatives in the legislature agree that cap and trade dollars should be used for this process? We are still talking August versus April.

Ms. HEDLUND. I would suggest you address that question to Mr. Richard. We do recognize that acts of the legislature, that they are subject to appropriation, as is my next paycheck.

Mr. DENHAM. My concern is this does not seem to be raising any red flags.

Ms. HEDLUND. We are very concerned about it, sir, and that is why we have been engaged in discussions with the Authority about their plans.

Mr. DENHAM. So who made the final decision to continue to spend the dollars? Is that something that Mr. Szabo makes on his own? Is that something he takes to Secretary Foxx? Is it something Secretary Foxx takes to the administration?

Ms. HEDLUND. We have not made a determination that they are in violation of their agreement. And so, we have continued to make those payments in the ordinary course.

Mr. DENHAM. Ms. Dolan, do you think that they are in violation?

Ms. DOLAN. I think, under the terms of the cooperative agreement as it stands at the moment, two things happen on April 1st. They may no longer take advantage of an advanced payment method, and can only be granted Federal funds under a reimbursement method. And, according to the funding contribution plan, as it exists in the cooperative agreement, funds starting in April of 2014 until, it appears from the chart, April of 2015 will be spent solely from the matching funds the State provides, instead of the ARRA funds, as an effort to "catch up" on the contributory match percentage that they are required to have.

So, at this point, considering that those contributory match funds are due in April of 2014, it doesn't appear that they have violated the agreement right now, as it stands.

Mr. DENHAM. So, given the November ruling, does the FRA have the right, under the grant agreement, to suspend payment? Do they have the right to be able to suspend payment to the California High-Speed Rail Authority if they so choose?

Ms. DOLAN. So, under Section 23 of the grant agreement, the FRA has several options for suspension and termination of the cooperative agreement if any number of circumstances exist. One of those possible circumstances is if the FRA makes a determination that the grantee will not be able to meet the contributory match percentage that is required under the agreement.

So, if the FRA determined that the Authority would not be able to meet the contributory match percentage, then under the agreement they would have the option to suspend or terminate funding.

Mr. DENHAM. Thank you. I do have a followup question on that, but my time has expired.

Ms. Brown?

Ms. BROWN. Thank you. You know, I have been here for 22 years, and I guess this is the first time I have ever seen anybody go after money for their State. I mean this is really breaking.

But my question has to be that if California is temporarily prevented from selling bonds because of the recent lawsuit, are there other ways California can meet its obligations?

Mr. Richard, you mentioned that we—you saved us $188 million. Can you expound upon that?

Mr. RICHARD. Well, thank you, Congresswoman. I think it is important to note that Governor Brown came into this project when it was already underway. It had been started by his predecessor and had been supported by many Governors over the years. In fact, even when he was President, President Reagan spoke to the Japanese and said, "We are going to be building high-speed rail in California, just like you folks have here, in Japan." So this has been something that California has been looking at for many, many years.

When Governor Brown came in, this program did have a number of challenges and a number of problems, which we've tried to address. My background is in local transit. My colleague's background is in finance. We tried to bring a businesslike approach to this project. What that meant was that we wanted to look at this in a way that business leaders would look at the challenges and opportunities of a similar venture.

You know, Ms. Hedlund, before she had this position, was a commercial attorney working on infrastructure projects. She knows how to negotiate an agreement that has security provisions in it. And I can tell you that when we sat down to negotiate for months and months with the Federal Railroad Administration, they went through, in chapter and verse, how they were going to make sure that they protected themselves.

What the agreement says is that if we can, we will pay back the money from our bonds. If we don't have the money from the bonds, we will pay it back from other sources of State funds. If all of that fails, they have the right, under Federal law, to actually offset monies that would come to California. So they have an agreement that you, as a Member of Congress, should be happy about, because it protects the taxpayers of Florida and every other State in the Nation, Federal taxpayers, when it comes to California.

Now, our administration is committed to meeting its obligations. Our hope is that, possibly by April, we will have access to the bond money. But if we do not, the Brown administration is committed to working with our Federal funding partners to make sure that, under the grant agreement, we continue to work in harmony to achieve the objectives. That is what we are going to do.

Ms. BROWN. Well, I surely hope so, because I am sure we will be back here April 1 with another hearing. You know, we are going to micromanage this project. You need to know that.

Deputy, are you comfortable that we are safeguarding the taxpayers' dollars, particularly the billion dollars I gave?

[Laughter.]

Ms. HEDLUND. We are absolutely comfortable that we are safeguarding the taxpayers' dollars.

Ms. BROWN. And do you need any authority from us?

Ms. HEDLUND. We do not need any additional authority from you to safeguard the taxpayers' dollars in this project.

Ms. BROWN. I am, overall, interested in how to expedite projects. I heard the person talking from Texas, which—I have been out there five times. The flights between Houston and Dallas, I mean, it is—I have sat on the runway for an hour. And if they had a high-speed train, I could have been there. And we just sit on the runway. And all of the local communities are supportive of the project. But the problem was you didn't have the support in the capital. And that is part of the project. Where you have the local government's support, then you don't have the people—the capital.

So, this is a project that has local and State support, but you are having problems up here, with the Federal Government. Not the Federal Government, but Members of Congress.

Mr. RICHARD. Well, Madam Ranking Member——

Ms. BROWN. Republican Members of Congress, OK.

Mr. RICHARD. There are certainly people in California who have concerns about the project. So I don't want to pretend otherwise——

Ms. BROWN. I was there. I mean I was there when the Governor announced the—I was there for another meeting, so I was there when the $100 million, $100 billion, or something—I was there. So I have been there, over and over again, in the congestion, in the traffic. I had a convention out there, it was the worst one I ever had, because it takes all day to get from one place to another. So there has got to be a better way to get around.

Mr. RICHARD. Well, and on that point—and also, in response to something that Congressman DeFazio said before—one of the biggest supporters of the California high-speed rail project is the head of the San Francisco International Airport. That is because, right now, between San Francisco and Los Angeles, which is the busiest short-haul air corridor in the country, 25 percent of those flights are delayed. They don't have any room to expand the airport. And their view is they want to use their runways and their gates for long-haul——

Ms. BROWN. Long-haul.

Mr. RICHARD [continuing]. International flights. That is the most effective use of that resource. So they have been very strong supporters, and we have enjoyed the support of the mayors of all of our biggest cities, the heads of the business communities in all the major cities. We have a lot of support. We do have detractors, but we have a lot of support.

Ms. BROWN. Yes, sir.

Mr. DENHAM. Thank you, Mr. Richard. Mr. Mica?

Mr. MICA. Thank you. A couple of questions. Since we have got pretty substantial Federal expenditure already in the project, and this will be one of the biggest expenditures of Federal funds for any infrastructure project, there is some—there is now some uncer-

tainty. I guess your superior court had said that there are not funds available. Has the Governor made a commitment? And that may be a temporary situation. If, in fact, those funds are not available for California to come up with its share, has he made a commitment to find the resources to continue the project? Do you have a written—I mean or some solid commitment?

Again, there—a quarter of a billion Federal funds has already been spent. State has certain commitments. This is not just the Federal project, but California's project.

Mr. RICHARD. Yes, Congressman Mica, and I am glad you made that last point. The Federal Government has spent several hundreds of millions of dollars on this project, already. But so also has California. We have spent $400 million of our State bond funds on this project to date. Of that, about $97 million qualifies as matching funds under our agreement with the Federal Government. But the other $300 million is money that we spent, preparatory to that, to do environmental——

Mr. MICA. No, but both sides have spent money. My question deals with——

Mr. RICHARD. Going forward.

Mr. MICA. Yes.

Mr. RICHARD. Going forward, Congressman, Governor Brown just went to the California Legislature with his budget to put, at least for the upcoming fiscal year, $250 million from our new greenhouse gas emission program into high-speed rail. He also indicated in his budget that he will be asking the California Legislature to create a more permanent structure around that, so that we have——

Mr. MICA. But right now the answer would have to be no, you do not have a commitment, because he doesn't have the approval of the legislature. He does have a proposal before the legislature for both short term or interim, and then long term. Is that the answer?

Mr. RICHARD. That would be my answer, sir.

Mr. MICA. OK. Well, you know, I am the strongest advocate of high-speed rail in the Congress. Have been. I didn't think they should start in California, with a stretch that—nowhere. It can lead to somewhere. It has to lead to the bay area or it has to lead to L.A.

Mr. RICHARD. Right.

Mr. MICA. Those are very expensive links, too. And in the future we are going to end up with a high-speed train, unfortunately, that does not serve substantial population areas, nor does it connect in to fixed systems. And again, my druthers would be to do the Northeast Corridor, where we have the only right of way we own, Amtrak-substantial, that could be eligible for that. So I see more and more money going into this project. California has had incredible financial problems. I think it is starting to come out of it. And we have no commitment for the future.

The other question I have is I consider Amtrak our Soviet-style train system. They are just—I mean their record, and we keep pouring more money into losing propositions. But now I understand Amtrak has a potential operational—or some participation in the project. Can you describe that to me, without me getting a prescription for depressant medication?

Mr. RICHARD. I can't guarantee that, Congressman. First, I want to say that even though I understand that you have had concerns about the California project, we recognize and respect your leadership on high-speed rail.

We also believe that the Northeast Corridor is an essential corridor for high-speed rail. So we don't see competition with that program. In fact, we would love to work together with that project.

On the question of Amtrak, as I was explaining before, to one of your colleagues, we are starting in the Central Valley, sir, and I would be very happy to talk about reasons why.

Mr. MICA. Do you have a relationship now, or an agreement with Amtrak——

Mr. RICHARD. Yes.

Mr. MICA [continuing]. For service, or what?

Mr. RICHARD. Well, we—the most interesting agreement we have with Amtrak is actually for the joint procurement of locomotives for the——

Mr. MICA. Oh, that—oh, please. I am going to have to go get a double dose of depressants. Their last locomotives were the Acela engines. You know the history of that. They misdesigned them, they were supposed to be tilt, so you could get the speed, then—they spent so much money in the suit of the acquisition almost as they did for the equipment. Then the tilt trains were misdesigned so they were hitting—they could hit the other trains. They had to put metal wedges in, so we have never had them utilized to their full capability. Now they are replacing them. That is another nightmare that I am concerned about.

I would look at—to anybody except for Amtrak to—if you are going to get into a locomotive operational or any kind of a deal.

Mr. RICHARD. Well, I am happy I stumbled into that one, sir.

But the thing I was going to say is that of the five busiest Amtrak routes in the United States, three are in California. The fifth busiest Amtrak route is in the Central Valley of California. There are a million trips per year on that segment. As we build to full high-speed rail, which will accomplish what you said you wanted to see, connecting our cities with high-speed, intercity service, we can, as an interim step, upgrade that Amtrak service substantially.

Mr. DENHAM. Thank you, Mr. Mica. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you. Thank you, Mr. Chair. And one of the other things that I think we have heard—not heard as much about is the system of payment, the fare system, and how it can be made affordable for the nonprofessional people.

Then the next issue that I would like for you to maybe even touch upon would be the safety issue, whether there will be the positive train control type system to protect the general public, the safety of the workers, the rail workers, the conductors, et cetera. Would you address that, please?

Mr. RICHARD. I would be happy to. First of all, we are very committed to make sure that this high-speed rail program benefits all Californians. I had the opportunity recently to travel to China with Governor Brown on his trade mission. We rode the high-speed rail system in China. As you know, they have built 7,000 miles of high-speed rail in China.

It was very interesting because there were levels of service. In some of the cars, there were basically the workers, who were moving back and forth between the cities. And I understand in Japan this is true, as well. So this system has to accommodate all of the community's needs for travel and transportation, and we believe that it will.

Regarding our pricing structure, I took the Amtrak from Sacramento to Fresno many times in the course of this effort. The fare is $43. If we were operating high-speed rail today, the fare to go all the way from Los Angeles to San Francisco would be $81. So we think we are pretty comparable to the Amtrak fare structure right now, and that is a very popular system, especially with working-class folks in the Central Valley.

On your question about safety, the California high-speed rail system will be 520 miles in the first phase of fully positive train-controlled track. It will be entirely subject to positive train control. And, Congresswoman, our program is also providing $180 million to upgrade the existing Amtrak service in California, including the addition of positive train control. So we are getting a jump on positive train control through funding from the California high-speed rail program.

And on your final question about worker safety, I am happy to say that we work very closely with the Teamsters, Brotherhood of Locomotive Engineers. We are working to make sure that what we are doing is going to meet those safety standards. It is very important.

Mrs. NAPOLITANO. Thank you, sir, for the answer. And I would yield to Ms. Brown.

Ms. BROWN. Thank you. I just want to mention and clarify that Governor Brown sent a letter to DOT committing that the State is to meet its obligations in the grant agreement. I don't know, do you have that, Deputy?

Mr. RICHARD. Ms. Brown, I don't have that letter with me. I am aware of that letter. That letter was part and parcel of our negotiations with the Department of Transportation and what I was saying before about their insistence that they have security against our advance payments.

Ms. BROWN. Deputy, are you all——

Ms. HEDLUND. Yes, we have that letter, and we are very gratified by that letter. Thank you.

Ms. BROWN. And that letter—it meets your qualifications?

Ms. HEDLUND. Yes.

Ms. BROWN. OK.

Ms. HEDLUND. Additional security.

Ms. BROWN. Can you please submit that letter to the record?

Ms. HEDLUND. Yes, we will do that.

[The information follows:]

OFFICE OF THE GOVERNOR

November 29, 2012

The Honorable Joseph C. Szabo
Administrator
Federal Railroad Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Administrator Szabo:

I am writing to confirm that pending changes in the structure of California state government will not change the status of the California High-Speed Rail Authority (High-Speed Rail Authority) as an instrumentality of the State of California. Additionally, these changes will have no effect on the existing legal obligations of the High-Speed Rail Authority or the state to the Federal Railroad Administration.

The High-Speed Rail Authority was created by statute and is part of California state government. (Pub. Utl. Code, § 185020.) The High-Speed Rail Authority has express statutory authority to enter into contracts and to accept grants from the federal government on behalf of the state. (Pub. Utl. Code, § 185034.) This past year, California approved a reorganization of state government that will align the High-Speed Rail Authority with California's new Transportation Agency. This alignment will not have any effect on the High-Speed Rail Authority's current status as a state entity, or its existing legal commitments. As such, the High-Speed Rail Authority's legal commitments will continue to be commitments of the State of California.

If I can be of further assistance, please let me know. We look forward to continuing to work with the Federal Railroad Administration as California moves forward with implementation of our federal grants for construction of our high-speed rail system.

Sincerely,

Nancy McFadden

Cc: Brian Kelly, Acting Secretary, Business Transportation & Housing Agency
Jeff Morales, CEO, California High Speed Rail Authority
Robert Rivkin, General Counsel, U.S. Department of Transportation

Ms. BROWN. Thank you. Thank you very much. I yield back the balance of my time.

[Laughter.]

Ms. BROWN. I yield back. And do you want your time back? I yield it to Ms. Hahn, so we can finish.

You wanted a minute?

Ms. HAHN. Thank you. It is so surreal to be in this hearing, literally. The voices behind me, if I didn't know better, that voice sounds like a congressmember representing any State but California. And the voice right behind me sounds like, if I didn't know better, secretly lived in California, not to mention gave up $1 billion from the State that she represents to go towards this high-speed project. So it is just really amazing to me that our California delegation is not united together in trying to bring Federal resources to the beautiful State of California, instead of trying to fight it.

So, my last couple questions are, you know, again, just reiterate, Mr. Richard, how confident you are that the State legislature will approve this $250 million and the cap and trade dollars.

Also, I haven't talked a lot about jobs. You were accused by one of our Members of being fuzzy on the jobs number. Once construction begins, like to know how many jobs are we talking about? And, of course, for those of us down in the southern California area, even though the project is starting somewhere else, can we count on some of those construction jobs to come from Los Angeles, some of the communities that I represent?

And maybe talk about how Palmdale seems to be this tipping point. And what does that mean for this project in the future?

Mr. RICHARD. Very quickly, Congresswoman, first of all, yes, we hope that you will be seeing jobs in southern California, as well, with a lot of the grade separations that Mrs. Napolitano had talked about, and other things that we are doing in southern California. We estimate that, during the initial construction segment, there will be 20,000 jobs per year for 5 years.

And Mr. LaMalfa was correct. Some people jumped on us because we used the term "100,000 jobs." That was basically the same way that people have described these job estimates historically. But we went and broke it down and said 100,000 jobs means 20,000 jobs a year for 5 years, which is a lot of jobs in an area that has twice the unemployment rate of the State, as a whole. The million jobs relates to the entire build-out, which is 100,000 jobs per year for 10 years. So, there is a lot of employment associated with this project.

I will be respectful of our California Legislature, so I won't make a prediction as to how they would vote on cap and trade. It would be inappropriate for me to do so. But I will say that we are having conversations with environmental leaders and others, and I think they are more comfortable, as they have seen the Governor's entire program for use of the cap and trade money, of which only 29 percent is not just for high-speed rail, but also for rail modernization—$250 million for us, $50 million for rail modernization, $200 million more for clean vehicles, more money for transit land use, more money for urban forestry. So, as they are seeing the totality of the

Governor's approach to using the cap and trade funds, I think we are seeing a lot of support.

Palmdale is emerging as a major hub. The mayor of Palmdale, Jim Ledford, is a real visionary, and sees the benefit of high-speed rail. And Palmdale could be the place where the Desert Express connects from Las Vegas, if that project is built, where high-speed rail connects into the Central Valley, and the third leg reaches down into L.A., Anaheim. The mayor and the civic leaders there already see what that could mean, in terms of the revitalization of downtown and development in Palmdale.

Mr. DENHAM. Thank you. There has certainly been a lot of questions to this Member, who is from California, on "Why wouldn't you just spend the money?" Just give all the money to California, $68 billion. Let's take some more money, 55—no, let's take the entire transportation budget for the rest of the United States, and just give it to California. You are from California, why wouldn't you take it? Here is why. Here is my concern.

Ms. Dolan, Mr. Richard testified a minute ago that FRA, the Administration, the U.S. Government, if the Antideficiency Act was not followed, if they cannot come up with their 50 percent match, then we could hold up other funds. So, the Governor has already committed $250 million that was supposed to go to environmental. That would help out my Central Valley. That would help out our air quality. We are already going to see—if some of the environmentalists in California don't get outraged that $250 million be used for something else.

But what other money could be held up? Could Federal education dollars be held up?

Ms. DOLAN. So, under the terms of the cooperative agreement, their—FRA reserves their right to require repayment of either all or a part of the funds that have been given to the grantee. That repayment can be done through what is called an administrative offset. And I believe that that would reach, in this order, FRA funds and then DOT funds and then, in the event that those funds cumulatively are not enough money, funds from the rest of money that is owed to California from the Federal budget.

Mr. DENHAM. So the Federal Government, if the State does not repay its 50 percent match, which—the State is already in the hole—if the State cannot come up with its match, the Federal Government could first withhold all rail funding, then withhold all highway funds and aviation funds, and then go into deeper pockets of education, when our school systems are already failing our kids in California. Is that correct?

Ms. DOLAN. The FRA reserves that right in the cooperative agreement. As it is written at the moment, it is in their discretion to——

Mr. DENHAM. Also——

Ms. DOLAN [continuing]. Decide how to exercise that——

Mr. DENHAM. Also, infrastructure dollars to water storage, which—water is being shut off in my Central Valley right now, and we are having huge droughts, tens of thousands of jobs that will be lost, due to water. That is another issue that could be held up.

This is why this is such a big issue for California. It is about priorities. This is not just an endless pot of money, this is not just free

money. This is not just, "Let's take it from Florida and every other State and give it all to California." We have priorities. We are dealing with budgets. We have to be good stewards of the Federal taxpayers' dollar.

And so, when I am asking these questions, it is not because I hate high-speed rail. I think there are some great high-speed rail projects going in across the Nation. I think, you know, seeing Maglev, a newer technology than high-speed rail, may have an opportunity in the DC area. There are great infrastructure projects that are moving forward, as we move forward, as a country. The question is, what are our priorities? Sixty-eight billion dollars that could balloon to $100 billion is something I am going to continue to have a lot of questions about.

Ms. Hedlund, Ms. Dolan said that she believes the—I don't want to misquote you—that, "They can make the determination on whether or not to stop funding." Do you believe that you have that ability to stop funding at this point? Is your discretion—is it up to the discretion of the Administration?

Ms. HEDLUND. Since we have not made a determination that the Authority is currently in default, I think our legal obligation, at this point in time, is to honor the commitments made by the State of California, and continue funding. I think we have a legal obligation to continue funding.

Mr. DENHAM. But if they do not—at a certain point, if the Administration decides that you have—that the Authority has hit some type of trigger, then you feel that you have the ability to make that determination, that they are not fulfilling their obligation?

Ms. HEDLUND. It would depend on the facts and the circumstances at the time; they do not exist today.

Mr. DENHAM. So, April 1st, they owe $180 million. If they cannot find that money, would that be one?

Ms. HEDLUND. It would depend on the facts at the time.

Mr. DENHAM. If the legislature does not approve the $250 million in August or July or June, would that be something that would trigger it?

Ms. HEDLUND. The Authority has the ability to cure the deficiencies that were set out by the court. That is another alternative.

Mr. DENHAM. In the grant agreement it reads, "Any failure to make reasonable progress on the project, and FRA determination that the grantee may be unable to meet the contributory match percentage required and complete the project according to the project schedules, shall provide sufficient grounds for FRA to terminate this agreement." You still agree with that, correct?

Ms. HEDLUND. That is what the agreement says.

Mr. DENHAM. My time is expired. Ms. Brown?

Ms. BROWN. Just in closing, I would like to have some questions submitted for the record.

In addition to that, I want to just clarify for you, Mr. Richard, Maglev is 1 billion per mile. There are many types of high-speed rail, Maglev just being one of them. There are many countries and many organizations that want to partner with you. Are you looking at who is providing the best possible resources and partnerships, and who is going to build a plant in the area? I mean, there are

many factors that you consider when you decide who is going to partner. I know there are options because I have talked to the Italians, the Japanese. Everybody wants to partner with us.

Mr. RICHARD. You are exactly right, Congresswoman. And the other issue you touched on is that the Congress, in appropriating these dollars, made it very clear that the Buy America provisions will apply. What that means is, for those who would come in and provide locomotives or any other things for high-speed rail, they are probably needing to look at building factories here and hiring American workers, because that is what American taxpayers expected. Our friends at the FRA have been very, very clear that they will enforce the Congress' policies on that provision, and we have made that clear to the people that we are talking with.

But you are right. There is international interest. They want to come here. They want to build high-speed rail in America. I would really like to see American companies developing the technology that some of the European and companies in Japan and China have developed.

Ms. BROWN. Spain. I mean, I love it. I love it.

Mr. RICHARD. They are very successful. But they want to work with us, they are looking forward to it. Congresswoman, we are going to be building high-speed rail in California.

Ms. BROWN. Thank you, thank you. And, like I said, if you can come up with some ways that we can help expedite it, the permitting process, or anything that we could do on the positive end, I would certainly be interested in, you know, working with you to that regard. I am constantly out in L.A., which I think is a nightmare, as far as transportation is concerned.

And, Deputy Secretary, I just want you to know that I know that Congress is not interested in bullying the Administration. And so, think kinder of us in our tone. We are learning, we are working, and we are, hopefully, moving forward and going to be a kinder, gentler Congress. I yield back.

Ms. HEDLUND. Ranking Member Brown, we always appreciate the opportunity to have a lively discussion with you.

Ms. BROWN. Lively, yes. Thank you. I yield back the balance of my time.

Mr. DENHAM. Thank you, Ms. Brown.

Mr. Richard, again, I appreciate your willingness, your openness. You know, we have had a great relationship, and continue to have ongoing conversations. And I understand that we may have some disagreements on some of the funding challenges, but you have certainly been a good partner to work with in this process.

I do have a question on the operating segment itself, on identifying available funding. The court ruling, that was one of the things that they had ruled on, was that the initial operating segment, the entire segment going from Merced all the way down to Palmdale, there is a $20 billion deficiency in putting that together.

So, basically, in a nutshell, the court is deciding that, until you have that $20 billion funding gap, no Prop 1A funds can be utilized. How do you fill that $20 billion gap?

Mr. RICHARD. Mr. Chairman, first of all, thank you for your kind words. I also want to thank you for the courtesies that you have shown to me. I know that you have policy differences with us, but

I have appreciated the opportunity to work with you on this project, and we will continue to work with you and the committee.

This is going to get to be a little bit technical, but I think that in Ms. Dolan's excellent testimony that she provided to this committee, there is really the key to understanding how we look at this situation. The problem is that the bond act, the law, does not say that we have to build an initial operating segment. In fact, those words do not appear in the bond act. What the bond act says is that we have——

Mr. DENHAM. So, just to clarify, you disagree with the court's ruling.

Mr. RICHARD. No, sir. I can explain the court's ruling. What the court dealt with was the initial funding plan that the California High-Speed Rail Authority provided in November of 2011—and, Mr. Chairman, it was released just after I was appointed by the Governor; it was really in the can ready to go before that. That plan described the first "usable segment"—and the "usable segment" is the key term, here, that the bond act says is what we have to build. The authors of the bond act knew that nobody was going to be able to unwrap a 520-mile high-speed rail system like a train set under a Christmas tree in 1 day. They knew it was going to be built in segments. They said that those must be usable segments. And I believe Ms. Dolan quoted that in her memo.

What happened was that the California High-Speed Rail Authority defined its usable segment as the initial operating segment. And, accordingly, the judge said, "If that is your first usable segment, you have to show me all the money, and you have to show me the environmental permits," and we did not have those.

But what was not in front of the judge was the revised business plan that we put forward before the California Legislature, 4 months later, in April 2012. And, responding to a lot of public comment, what we did was we said the valley segment is, in fact, a usable segment.

Mr. DENHAM. The valley segment, meaning the initial construction?

Mr. RICHARD. Correct. And it is a usable segment, precisely because, in response to public commentary, we are tying in to Amtrak, we are tying into ACE train, and we are doing these other things that would give it usability. And I would point out, Mr. Chairman, that in its approval of the first leg of that, the Surface Transportation Board used the term "usable segment" as they—as a justification for why they were providing that approval.

Our view is—and, obviously, the opponents of the project will come back and try to test it—our view is that, if that valley segment is a usable segment, and we believe it is—that we will comply with the judge's ruling by showing that we have all of the funding for that, which we do, and all of the environmental permits, which we will.

I will just end on this point, Mr. Chairman, which, as a former member of the California Legislature, I think you will appreciate. When our revised plan was put before the California Legislature in the spring of 2012, some of your former colleagues asked legislative counsel, "Does the High-Speed Rail Authority revised business plan comply with Proposition 1A?" The answer that came back from leg-

islative counsel, in a very detailed written opinion, was, "yes, it does."

That question has never been before Judge Kenny. He was dealing with the prior plan. So that is one of the reasons why, despite all of the press around this, we do not agree that in order to comply, in order to have access to the bonds, that we need to assemble $25 billion. We believe we have the funds in hand, and what we need to do to comply is to show that funding plan and to finish the environmental process so that we have the environmental documents in hand. That is eminently doable.

Mr. DENHAM. I guess the piece that I don't understand about this—I guess you would have two choices, either ignore the court ruling all together and hope that the attorney general can go ahead and float the bonds——

Mr. RICHARD. No, sir.

Mr. DENHAM [continuing]. Or, because you have a disagreement with the court, the court is looking at the initial operating segment, and you are redefining the usable segment as the initial construction segment, the—you would have to actually go back to another court, to another judge, or to this very same judge, and fight that case. Would you not?

Mr. RICHARD. I would almost agree with that. First of all, there is no prospect that the attorney general will give a clean bond opinion to try to sell the bonds until——

Mr. DENHAM. I didn't think there was, but——

Mr. RICHARD. Right. So I don't want to pretend that there is.

What the judge said to us was, "Go back and redo your funding plan to show that it complies." My view is that we can go back and we do exactly what the judge said. We are not, by any stretch of the imagination, Mr. Chairman, intending to ignore what the court said. What the court said was, "Before you can go forward, I need you to go back and redo this funding plan." In my view, that means updating the funding plan to be exactly what was presented to the California Legislature that they determined was likely to comply with the bond act.

There has been a lot of commentary about this, and I think most of what has appeared in the press and the discussion has been wrong. But it means that we can comply with the judge's ruling, not ignore it, sir. We would not do that.

Mr. DENHAM. I do want to finish this. I have got a couple more brief questions before we close. But do you want to go first, or——

Ms. BROWN. No, I am finished.

Mr. DENHAM. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chair. And this is an interesting extension, and I enjoy it.

I have been privileged to be on CODELs with Ms. Brown in Europe, and have ridden on some of those really fast trains, and spoken to the boards, some of the board members, in regard to how they put the plan together. We did that, what, 3 years ago, something like that.

The impressive thing about that was that their safety record, their ridership, was exceedingly high, their cost was affordable. And if they can do it, why couldn't we, other than the fact that

most of those countries own the land on which the transportation lines were geared to?

So, to me, we need to concentrate on the bigger picture, and that is the ability for us to be able to not necessarily compete, but be able to maintain the necessity of options for our ridership. And you are right. In California, I can tell you, when I was into the first phases of the building of the Freeway 105, which leads into where I live, it used to take me 20 minutes to the airport. It now takes me almost an hour. Same amount of distance.

So, we are congested, and there is more to come. How do we address the issues and begin to convince the general public and the Government, especially my colleagues in northern California, that this is going to be an effective way of being able to deal with part—it is not the whole answer, it is part of the answer, and we must be astute enough to understand that we need to invest it, and we need to convince our voters that this is where we need to go for the future of our generations.

And as far as taking funds and putting them into other areas, I am concerned about my project funding. I have covered that with you. But you can't commingle funds, like water funds or transportation funds. Let's be real about that. So, while we can talk big about how we need to be able to fund these other entities, we need to understand that we are not able, legally, to commingle funds, or to be able to transfer funds.

But, you know, there is an old—the movie—I can't remember the name of it, but it said, "Build it, and they will come." I have great expectations that it will be successful. And how we go about it is just having the faith that we can and that we will be able to not only find the funds, but find the partners to be able to do that.

So, with that, Ms. Corrine Brown, you want any further comments?

Ms. BROWN. No.

Mrs. NAPOLITANO. Thank you. I yield back. Thank you, Mr. Chair.

Mr. DENHAM. Thank you, Mrs. Napolitano.

I just wanted to follow up on the last discussion we had. So, if you disagree with the court's decision, or you have a difference of opinion on what the usable segment is—the court has defined that usable segment as the initial operating segment. If you are going to take your day in court, what is that timeline? When do you go back to court to clarify that?

Mr. RICHARD. First of all, Mr. Chairman, if I might clarify, I don't think it is a matter of us disagreeing with the court. What the court said was, "What I have in front of me, the preliminary plan from the high-speed rail, you guys defined usable segment as the initial operating segment. If that is your definition, then you have to meet these other tests."

Mr. DENHAM. Well, Prop 1A defines it, as well.

Mr. RICHARD. The words "initial operating segment" do not appear in Proposition 1A. It only talks about a usable segment.

Mr. DENHAM. Correct.

Mr. RICHARD. So, my predecessors on the California High-Speed Rail Authority board, as they were looking at their business plan and finance plan, which I inherited in November of 2011, they

equated initial operating segment with a usable segment. And the judge said, "OK, I am going to take you guys at your word. And, if that is the case, you needed to check these boxes."

It is not a matter that we are saying the judge was wrong. What we are saying is that, after that plan that he had in front of him, we presented an updated plan to the legislature that did not equate usable segment with the initial operating segment. It equated usable segment with the first valley construction, as enhanced by connections to existing rail. We think, then, that meets the same standard that the judge was talking about, and that is what the legislature voted on, and that is what the legislature's lawyers looked at and said met the provisions of Prop 1A.

Mr. DENHAM. Either case, it—either you have to comply with the court decision, it is a $20 billion hole to have an electrified track that goes around Palmdale and to San Fernando Valley—that is electrified, that will be high speed, hopefully it is not running a subsidy, because that is what Prop 1A says——

Mr. RICHARD. Won't be allowed to.

Mr. DENHAM. So, either you have to come up with that $20 billion and comply with the court, or you have to comply with Prop 1A, which says, if you are redefining that usable segment, that usable segment still says it cannot operate with a subsidy, and it cannot operate outside of high speed.

So, you are saying that this construction segment will not be high speed, it will not be electrified, it will just be a second Amtrak, which I know Mr. McCarthy, if he were still here, has huge issues with having two Amtraks that stop in his district and you get on a bus on both of them to go over Tehachapis. So, if it is not high speed, because it is not electrified, and it is running a subsidy, how does that initial construction segment comply with Prop 1A?

Mr. RICHARD. Mr. Chairman, I think maybe one of the most useful things I could do is to provide the committee with the opinion of California legislative counsel. In a 21-page, single-spaced opinion, they went through and looked at our revised business plan. They were asked by two of your former colleagues in the California Legislature, "Does this comply?" They concluded it did. That informed the vote of the California Legislature to appropriate the bond monies to move forward. And they went through an extensive legal analysis about why it did.

I could try to go through that here, but I fear, sir, that we would really get down into the weeds. But what I would say to you is I think, for this committee's purposes today, what you are interested in doing is making sure that the Federal taxpayers are protected, and that we have the ability to pay them back.

I can't tell you, Chairman Denham, when we might have access to the bond funds. People who oppose the project will continue to bring litigation. But I can tell you that we believe that our revised business plan is in harmony with Proposition 1A. We believe that that can be established. And we think that we have other backstop mechanisms. So, from the standpoint of Federal taxpayers, we don't think that there is a question.

As a Member of the delegation from the Central Valley, I think you are also concerned about other aspects of this. Is this just going to be stuck in the Central Valley? Are your citizens going to

actually be able to get to Los Angeles and San Francisco? And there, Mr. Chairman, I think we are hoping to come back to you very soon and say if we look at the bond money, and we look at the cap and trade dollars, we really believe—I want to be able to confirm this—but our vision is that we can get all the way to Palmdale, connect to the Metrolink, and that that triggers private-sector investment.

And, Mr. Chairman, I would look forward to working with you to work through that challenge. Because, if that is the case, that we can get to Palmdale, I think that is going to address many of the questions that you have had about this project. And that is what we are aiming to do right now.

Mr. DENHAM. And I don't know that you and I have ever had this conversation, but I think you are absolutely correct. That is my concern. My concern is that we build another Amtrak that stops in Bakersfield, and the rest of the Nation looks at California and says, "You just spent $6 billion," and it is decades, if ever, that this thing ever gets accomplished.

Now, I know you and I are both—you are moving forward, and that is your job. My job is looking over the Federal tax dollars, that we are actually spending money properly, and that we are not putting my voters, my State, at risk of losing highway dollars, aviation dollars, or education dollars. And so——

Mr. RICHARD. Absolutely.

Mr. DENHAM [continuing]. I look forward to this continued dialogue. I look forward to you getting me that information that proves that this operating segment either complies with the court decision, or that this construction segment complies with Prop 1A.

But I certainly think that FRA—I know that FRA has the ability. The question is whether they have the will to make a determination at a certain point. Whether that is April 1, when there is $180 million due, or whether that is later in this budget year, if the $250 million of cap and trade money becomes unconstitutional, or the legislature just votes it down, at a certain point FRA may be forced to make a determination that they withhold funds.

I have a better solution, and I am prepared to introduce a bill that will require FRA to suspend all payments until California High-Speed Rail Authority has the matching funds available, and is not hindered in coming forward with that, and spending that money.

So, I will be introducing this bill before we leave on our district work period next week, and I am happy to share the language with—to you after this hearing.

Ms. Brown, do you have any closing remarks?

Ms. BROWN. Just that I won't be signing on to your bill.

[Laughter.]

Mr. DENHAM. I am sure California would be happy to take more money from Florida, then.

Again, I would like to thank each of you for your testimony today. Ms. Hedlund, obviously, you can see my frustration has to do with FRA and its transparency. I look forward to getting those invoices from you.

If there are no further questions, I would ask unanimous consent that the record of today's hearing remain open until such time as

our witnesses have provided answers to those questions, and have submitted them in writing, and unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses to be included in today's record of today's hearing.

[No response.]

Mr. DENHAM. Without objection, so ordered. Again, I would like to thank our witnesses again for their testimony.

If no other Members have anything to add, the subcommittee stands adjourned.

[Whereupon, at 1:11 p.m., the subcommittee was adjourned.]

Statement of Rep. Zoe Lofgren
Hearing on: "California High Speed Rail Oversight"
House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
January 14, 2014

Thank you Chairman Denham, Ranking Member Brown, and my colleagues on the Committee for allowing me to speak with you today.

As the Chair of the California Democratic Congressional Delegation — the largest and most diverse state delegation comprised of 38 Members of the 113th Congress — I would like to reaffirm our strong support for the California High Speed Rail Project.

That's because as our economy improves and our population grows our transportation infrastructure falls further behind. As many of us know, our transportation infrastructure is already in need of serious upgrade and expansion, especially in California. Today California's skies are among the busiest in the country with hundreds of daily short-haul flights between the Los Angeles and San Francisco metro areas — and lots of delays.

And California's urban areas rank among the most congested in the country. The amount of time lost and fuel wasted in traffic costs Californians an estimated $18.7 billion annually.

At the same time we have an ever growing need for transportation infrastructure in our state because California's population is projected to have about 51 million people by 2050. It has been estimated that without the high speed rail project, California would need to build over 4,000 new freeway lane miles, 115 new airport gates and four new runways just to keep up with population growth.

Anyone who has been to California understands that this is not a practical solution. But high speed rail has the potential to transform our state and help meet that need—and in the process of helping the country's largest state economy, boost our country as well.

The California High Speed Rail project is the largest and most ambitious infrastructure endeavor of our time. When completed, it will move people swiftly and it will immediately ease congestion and improve air quality in California while creating thousands of jobs.

Californians, including folks in my home district of San Jose, will see immediate benefits from California's high speed rail project. It invests $1.5 billion in the Caltrain Modernization Program, which will replace Caltrain's diesel trains with electric trains on the Peninsula Corridor. According to a recent Economic Impact Report by the Bay Area Council, the project will create over 9,500 jobs, with over 90% being in the Bay Area.

The Bay Area Council also states that high speed rail will increase our state's bottom line as state and local revenues will see an increase of $71 million during the construction phase. Neighborhoods near Caltrain will also see an increase in property value by as much as $1 billion.

As good stewards of the environment, Californians by and large also agree that we must make critical infrastructure investments that connect our communities and reduce carbon emissions, while keeping our economy strong. Electrifying Caltrain will make its operation quieter and reduce air pollution by 90% and lower energy consumption by 64%. That's because electric trains cause less noise pollution and than diesel trains and are more cost effective to run.

Now, despite the overwhelming argument for the need for—and benefits of—high speed rail, this project certainly has its detractors too. In its first days, the project had a rocky start before the current management team was put in place. That led some to say the project is too large, while others disputed the high speed rail project's business plans, ridership and revenue forecasts.

That's why I joined Chairman Denham in asking for the GAO—Congress's independent and non-partisan auditors—to conduct a thorough review of the high

speed rail project and its cost estimates, the project's funding plan, and the passenger ridership and revenues forecast.

Last Spring, the GAO came back with its report and gave the California High Speed Rail Authority high marks for its cost estimates, ridership estimates, and funding plan. The GAO also made some noteworthy observations, saying that the greatest challenge before California's high speed rail project is not whether it can be done, but whether it will be funded, particularly on the federal level in order to attract much needed private investment.

That uncertainty continues to haunt the project because investors question whether the federal support will be there in the future. It's also one of the reasons why the California High Speed Rail Authority's very realistic and responsible business plan is building the project in phases. However, based on experiences in other countries and positive ridership estimates by the GAO, it seems likely that the private sector will invest in the project if it is allowed to move forward.

It will take both public and private support at all levels to make high speed rail in California a reality. The people of California have already voted in support of it, and taxpayer's dollars have already been invested in it, including $3.3 billion in federal grants.

Just this week, California Governor Jerry Brown announced his 2014-2015 state budget, pledging $250 million in Cap and Trade revenues for high speed rail, while laying out continued funding for the project in following years. Given the environmental benefits both short-term and long-term, using Cap and Trade funds for this project is very appropriate, and the delegation would like to commend Governor Brown for his leadership on high speed rail.

We know high speed rail can work in America if it is given a chance to succeed. As the GAO noted in its report, several private consortiums were preparing bids for a high speed rail project in Florida before that state's governor pulled the plug. And as recently as January 9th, the Washington Post reported that Japan is seriously interested in developing a high speed rail line between our nation's Capital and

Baltimore, Maryland, even offering to foot half of the projected $8 billion it would cost.

Our global competitors certainly aren't holding back on their high speed rail infrastructure. That's because around the world, high speed rail has been shown to be an effective, popular and profitable mode of transportation. When it comes to transportation, I believe the United States should be second to none. It was solid investments in infrastructure that helped make the 20th Century the American Century. California's High Speed Rail project can help continue that kind of success for our country in the century to come.

OPENING STATEMENT
T&I Committee Hearing on High Speed Rail
January 15, 2014
2167 Rayburn –10AM

Rep. Kevin McCarthy

Thank you Mr. Chairman for holding another important hearing on California high speed rail and for allowing me to testify today.

I have expressed my opposition to the California High Speed Rail Authority's deeply flawed business plan, which is not what California voters approved in Proposition 1-A back in 2008, and I do so again today.

I continue to have serious concerns with the Authority's finances and how they plan to come up

with the tens of billions of additional funds needed to complete the project. To date, the Authority has never provided a satisfactory answer, and continues to move forward with this project. My colleagues and I even commissioned the Government Accountability Office to audit the Authority's plan, and GAO also expressed concerns about the Authority's funding sources, public and private. Not one additional cent has been identified for this project.

In fact, the Authority recently lost its largest source of funds when a Sacramento County Superior Court Judge prohibited the Authority from spending

state funds on this project because they are violating requirements set by Prop 1-A. That leaves the Authority with just a little over three billion in Federal tax dollars to waste while they come up with new schemes to get state funds, like cap-and-trade. Not to mention, one of the original requirements for spending these federal funds was that the state matches every federal dollar it spends, a requirement the state now looks unable to ever meet.

The authority's business plan and funding sources for the high speed rail project were questionable from day one. The real concern here is the prudent use of billions of tax-payer's dollars,

which the Authority has proven time and again that they are unable to be good stewards of.

In addition, I know many on our side of the aisle were disappointed by the Surface Transportation Board's decision last year to approve the 1st segment of this project. I disagree with this decision and believe STB should have reviewed the project in its entirety rather than in an unprecedented, segment-by-segment piecemeal fashion. At least STB refused to approve the second segment of this project until environmental documentation is complete. This is just another example of how the High Speed Rail Authority continues to bend the rules and seek

exemptions to ram through high speed rail because they believe they know what is best for Californians.

Mr. Chairman, the authority has yet to break ground for the high speed rail project, but they have already dug themselves in a hole and are wasting the public's money. Since approving Prop 1-A, California voters have turned on this project because they now see it for the boondoggle it is. The Authority has not dealt with Central Valley communities in a meaningful manner, has failed to properly plan this project, and has failed to secure any additional funding. If the Authority cannot prove to us and this committee that California high

speed rail is viable, what makes any of us think they can build it, much less operate and maintain it? I call again for an end to the Authority's current plan for California high speed rail and that not one more Federal tax dollar is spent on this boondoggle.

Thank you for your time today.

Office of Congresswoman Loretta Sanchez

Talking Points – Opening Statement

To: Loretta
From: Jessica
Date: January 15, 2014
Re: T&I Committee Hearing on CA HSR

Thank you Chairman Denham and Ranking Member Brown for having me on this panel today.

I appreciate the opportunity to speak on behalf of a project that will be instrumental to California's economic recovery.

It is big.

It is bold.

In other words, it is Californian.

But high speed rail in California is not a pipe dream or a 1950s fantasy – it is a transformative project that will help our state climb out of the greatest recession since the great depression.

There are a couple realities California faces right now:

Number one: Our unemployment rate is still stuck at over 8%.

Number two: We have some of the worst traffic congestion in the nation.

High Speed Rail directly alleviates these problems.

It has been proven time and again that investments in our roads, bridges and railways put people to work and pay dividends into the future.

In the first five years of construction alone, California's high speed rail system will support 100,000 new construction jobs in areas throughout California where unemployment is double that of the national average.

And it is estimated that over one million additional direct and indirect jobs will be created just by connecting the Los Angeles and San Francisco metropolitan areas.

This project is moving forward and armed with $400 million in state bonds from Proposition 1A.

Also this project has spent $100 million in state funds against the $288 million in federal funds from the Grant Agreements.

And as of today, we have over $3.3 billion in federal funds allocated for this project.

And I want to be clear, since I know my colleagues may paint recent court decisions as a reason for not moving forward, with regard to Proposition 1A.

The court has not issued any injunction on this project, nor have the recent rulings prohibited the state from selling bonds.

In any major systematic change, there are challenges and there are those that will say no, but progress will not be halted.

We are making these investments because we know that for every 1 billion dollars invested infrastructure, 18,000 jobs – good jobs -- can be created.

I ask my colleagues who have fought this project from the beginning, how serious are you about getting people back to work?

It is a no brainer.

High Speed Rail also addresses a problem that is quintessentially, if not uniquely, Californian: traffic congestion.

Travel on California's interstate system is increasing at a rate five times faster than capacity.

Vehicle miles traveled increasing by 36 percent between 1990 and 2004, and the number of Interstate lane miles increasing by only 7 percent during that same period.

This has made our 170,000 miles of roadways the busiest in the nation.

Every year, auto congestion drains $18.7 billion in lost time and wasted fuel from the state's economy.

For my colleagues who have never made the trip, driving from Los Angeles to San Francisco is, at minimum, a six hour trek with traffic battles in every town.

I know some of my colleagues may argue that this project has become too costly but the price of doing nothing will almost cost us twice as much as an innovative approach that allow us to catch up to other developed countries around the world.

In fact, the California High-Speed Rail Authority states that with the completion of this system, California's drivers will see significant relief in traffic congestion, with a reduction of 320 billion vehicle miles traveled over the next 40 years.

The same goes for air travel.

As a licensed pilot myself, I can assure you that the traffic in the airspace between Los Angeles and San Francisco causes the most delays in the nation.

We may not be able to rid the world of highway and air traffic congestion, but we can reduce it and provide alternatives for Californians that save time and money.

High speed rail would make that LA to San Francisco trip in a comfortable 2 hours and 40 minutes.

The list of benefits goes on and on – economic development around new stations, reduced air and noise pollution, increased travel safety, et cetera.

I have and will continue to strongly support this project.

And I will end with this – while we delay and debate high speed rail, China, Japan and other countries around the world have already built it.

It's time for California High Speed Rail to go full steam ahead.

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STATEMENT OF CONGRESSMAN JIM COSTA

BEFORE THE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

JANUARY 15, 2014

- AS PREPARED FOR DELIVERY –

Introduction

Chairman Denham, Ranking Member Brown and Members of the Subcommittee, it is my pleasure to be with you today.

As we all know, building major infrastructure projects is never easy, and oversight of these projects is necessary and appropriate.

That's why I joined with my colleague Chairman Denham in asking the Government Accountability Office (GAO) – the government's independent watchdog – to audit the project.

After more than a year of review, the GAO reported that the Authority followed best practices in each area they studied: ridership, revenue, cost estimates and the analysis of the economic impact of the project.

In fact, the GAO's report shows what I have begun to notice over the past year: Things are on the right track, but legitimate challenges remain.

Lessons from the past

California's High-Speed Rail project is not unique.

We know that building infrastructure in this country is challenging.

When California sought to build the State Water Project, it faced lawsuits, funding challenges and opposition from many.

Our forefathers knew they didn't need the water then, but that future generations would.

So, they buckled down, worked together, and built the largest and most complex water delivery system the world has ever seen.

I am hopeful that today we can focus on the legitimate challenges facing California High-Speed Rail and how we can work together to make this project work for all Californians.

Facts

I also hope we can stick to the facts.

And, the facts are, California will see significant population growth over the next thirty years, and our state's transportation system is simply inadequate.

In order to accommodate this growth, the question is not if we should invest in our transportation infrastructure, but how.

High-speed rail

In response to this challenge, in 2008, Californians approved the construction of a high-speed rail system that generates a profit without public subsidy for operation – something highways and airports do not accomplish.

From the time the first shovel hits the ground later this year, the project will be a true economic game-changer for the Valley.

There are unemployed workers who have already been trained specifically for the thousands of jobs this project will create.

During this Subcommittee's last field hearing in California, we saw hardhats on many of people in the audience.

We ought to work together to get these Americans to work sooner rather than later.

Agriculture

This major investment in our state's transportation network cannot and will not come at the expense of the San Joaquin Valley's agricultural sector, which is the backbone of our economy.

As a third-generation farmer who continues to farm today, I fight everyday on behalf of farmers and growers to preserve their business and our Valley's way of life.

I reject the idea that investing in our state's transportation network means we cannot invest in our state's water infrastructure to bring desperately needed water to the Valley.

California can afford to invest in water and transportation because the success of our state in the next thirty years depends on both.

Conclusion

The California High-Speed Rail project does face challenges today, but that's no reason to kill the project and send billions of dollars in federal investment to other states.

With thousands of jobs for the Valley on the line, let's use today's hearing as an opportunity to exchange ideas on how to best move California and this project forward.

Thank you for your time.

United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous

Congressman David G. Valadao
Wednesday, January 15, 2014

High Speed Rail Testimony

Chairman Denham, Ranking Member Brown, and members of the Railroads Pipelines and Hazardous Materials Subcommittee, thank you for the opportunity to testify before you today.

As a lifelong resident and taxpayer of California's Central Valley, I have watched the proposed California High Speed Rail Project transform over the years. I have watched as the estimated costs of the project has ballooned tens of billions of dollars more than was promised to voters in 2008. I have watched as the Rail Authority has invented a plan that takes thousands of acres of farm land out of production and destroys hundreds of homes and business throughout our communities.

Every single day, I hear from constituents of California's 21st Congressional District, who are opposed to and worried about California's misguided High Speed Rail project. They say the project spends too much money, delivers too little of its promises, and threatens their very livelihoods. Constituents located in the path of the project complain about the lack of information provided to landowners and the sheer fear that they are sacrificing their dreams and hard work for something that is not feasible.

The current plan, of which is constantly changing, calls for tracks to cut across the entire length of the San Joaquin Valley through some of our nation's most productive farm land. Fields will be cut in half, fertile ground will be taken out of farming, and production will suffer. For many, this farmland is their home and the proposed High Speed Rail project will impact countless families. All of this with very little benefit to my constituents in the Central Valley.

While estimates of the project's price tag continue to escalate, I find it increasingly difficult to reconcile the tremendous costs of the project with the limited benefits it provides to my constituents and to all taxpayers in California as a whole. When California voters approved the project in 2008, they were told the project would cost $33 billion dollars and the burden would be shared equally between State and Federal governments and private investors. Since then, cost estimate skyrocketed to over $90 billion dollars for a fully operational high speed rail line and near $70 billion dollars for a new "blended" line that is only high speed some of the time. To date, the State has been unable to uphold its end of the bargain and provide matching funds for federal dollars. California's taxpayers simply cannot support a multi-billion dollar boondoggle.

As this Committee continues to weigh the pros and cons of the California High Speed Rail project, it is important to consider tradeoffs of this project. Every one of our constituents' makes tradeoffs when they manage their family budget and our government should operate no differently. When the State of California chooses to spend the taxpayers' money on high-speed trains, they are forced to set aside other priorities.

This year, California faces a drought that leaves the availability of clean, high-quality water in jeopardy for many farmers and families. At the same time, California's aging water infrastructure is struggling to keep up with demand from a growing population. When the State of California chooses to spend taxpayer money on high speed rail, they are choosing to neglect addressing our Valley's water crisis. They are choosing to jeopardize water for over 30 million Californians.

United States House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous

Congressman David G. Valadao
Wednesday, January 15, 2014

There was a time when California led the world in technological advancement and innovation. Unfortunately, the California High Speed Rail project is anything but innovative. California's High Speed Rail proposal relies on old technology that is on its way to being phased out. Meanwhile, across the globe, America's competitors are already well on their way to developing the next-generation of high speed rail technology. Today, innovation is increasingly being performed overseas by foreign workers and inventors. At the same time, the United States continues to lag behind in many measures of worldwide educational achievement. We will continue to lose our advantage to foreign nations if we do not educate our young people. When the State of California chooses to spend taxpayer money on high speed rail, they are choosing to not invest in education, our children, and our future.

Last October, the State of California was ordered by a federal judge to free over 9,600 inmates by the end of 2013. The reason: California has been unable to provide the funding necessary to stop overcrowding and keep dangerous criminals behind bars. I think many of our constituents would agree that public safety is among the most basic of government's functions. Simply put, if California cannot afford to keep convicted criminals behind bars it certainly cannot afford a needless billion dollar project. When the State of California chooses to spend taxpayer money on high speed rail, they are also choosing to put the safety of my constituents' families and communities in jeopardy.

The California High Speed Rail Authority continues to pursue this project with only 4% ($3 Billion out of $68 Billion) of the funding necessary to achieve the largest infrastructure project in the country. To continue to pursue High Speed Rail in California is to spend billions of dollars we don't have on a project we don't need.

California High Speed Rail comes at a tremendous cost to taxpayers while delivering no benefit to my constituents. The project will destroy homes and businesses throughout my District and diverts precious tax dollars away from far more pressing issues like expanding our water infrastructure, protecting our communities, and ensuring access to a quality education for our nation's young people. The greater cost is to the entire nation, as the public will continue to watch the Authority squander billions in pursuit of a dream they cannot achieve.

Now, more than ever, the Central Valley must come together to make their voices heard and oppose this wasteful project. I will continue to uphold my promise to my constituents and oppose the California High Speed Rail project.

I look forward to working with you, Chairman Denham and members of this Subcommittee, to make sure that this wasteful project is held accountable to the taxpayers.

Statement of
Karen Hedlund
Deputy Administrator
Federal Railroad Administration
US Department of Transportation

Before the
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
United States House of Representatives

A Review of the Challenges Facing California High Speed Rail

January 15, 2014

Chairman Denham, Ranking Member Brown and members of the Committee: It is my honor to represent President Obama and Secretary of Transportation Anthony Foxx before you today to discuss the California high-speed rail project. This testimony will explain why we believe high-speed rail is a critical component of the transportation network in both the United States and the State of California, provide an update on recent events and those aspects of the project that my agency is carefully assessing as we move forward, and conclude with a description of next steps.

The Mode of Opportunity for California

When FRA Administrator Joe Szabo last testified on this project in December 2011, he laid out an analysis of why this project is important for both California and the nation. To reiterate some key points:

- California is the world's 9th largest economy and is known across the globe for its innovative and entrepreneurial spirit, top-tier educational institutions, and thriving communities. With 12 percent of the nation's population and 13 percent of GDP, California's success is critical to the nation's economic vitality.

- By 2050, California is expected to have 60 million people. This growth is equivalent to adding the entire population of New York State. The Central Valley is expected to more than double in size, to 13.2 million people by 2050[1]—equivalent to *adding* more people to this region of the state than the entire population of Massachusetts.

- California's roads and airports are among the most congested in the country. Los Angeles-to-San Francisco is the busiest and most delay-prone short-haul air market in the U.S., with approximately one of every four flights late by at least an hour. Many of the most congested highway segments can also be found in California.

[1] California Department of Finance, "Population Projections for California and its Counties 2000-2050," Table: Population Projections, July 2007. http://www.dof.ca.gov/research/demographic/reports/projections/p-1/.

- Connected to the congestion challenge, California has very serious air quality issues. According to the U.S. Environmental Protection Agency, four of the five metropolitan areas with the worst air quality are in California, with two Central Valley areas (Bakersfield and Fresno) ranking second and third.[2]

Since Administrator Szabo last testified, these challenges have grown even more pressing. Between 2011 and 2013, California gained nearly 700,000 people—more than the entire populations of the District of Columbia, Vermont, or Wyoming. California—and the nation—will suffer if these challenges are not addressed. The question we must answer is not *if* investments need to be made in California, but *how* – what is the best mix of investments from transportation, cost-effectiveness, and public benefits perspectives?

We agree with the State of California that high-speed rail must be a key part of their transportation network. High-speed rail will add a tremendous level of transportation capacity to the congested State, helping to alleviate the pressures on California's runways and highways. This, in turn, will yield substantial public benefits through economic development that spurs regional productivity and competitiveness, improved safety (rail is among the safest ways to travel), reduced emissions of greenhouse gas and other pollutants, and a reduction of wear-and-tear on other infrastructure in the State.

Phasing and implementation approach

The California High Speed Rail Authority (Authority) is pursuing a phased approach to implementation of the California High-Speed Train (HST) System. This approach was outlined in the Revised 2012 Business Plan, and we expect the Authority to further refine its plans for delivering world class high-speed rail in its upcoming 2014 Business Plan. This phased approach is consistent with how other major infrastructure projects have been implemented, both in the U.S. and across the globe.

Each interim phase is projected to turn an operating profit and generate substantial public benefits, even using new, more conservative cost and ridership forecasts. This strategy will allow the appropriate level of flexibility for a project of this magnitude and complexity, enabling the Authority, the State, and other stakeholders to adapt to changing conditions and challenges during the course of implementing the project. The Federal Railroad Administration (FRA) will continue to work closely with the Authority throughout the business planning, environmental analysis, and project development period to identify opportunities for operational and engineering efficiencies and additional interim phasing. This phased implementation starts with the completion of first segments to be constructed in California's Central Valley, and will continue with the crossing of the Tehachapis to Palmdale. There are six key reasons why the Authority is starting this project in the Central Valley:

[2] U.S. Environmental Protection Agency, "Number of Days with Air Quality Index Values Greater than 100 at Trend Sites, 1990-2010, 2010 Trend Sites," 2011. http://www.epa.gov/air/airtrends/aqi_info.html.

1. *Backbone of the System*: The Central Valley segment will provide the core north-south infrastructure, allowing options for the next segments (either north to the Bay Area or south to Palmdale and the Los Angeles Basin) based on project readiness, funding availability, and other factors. As discussed further below, the Central Valley segment will also provide early connectivity and improved transportation options through planned connections with regional commuter rail operations, including the San Joaquins and ACE, and once the project reaches Palmdale, to Metrolink.

2. *Maximize Funding*: The land-use patterns and flat terrain found in California's Central Valley allow for lower acquisition costs, less complex system designs, and the highest prospective speeds.

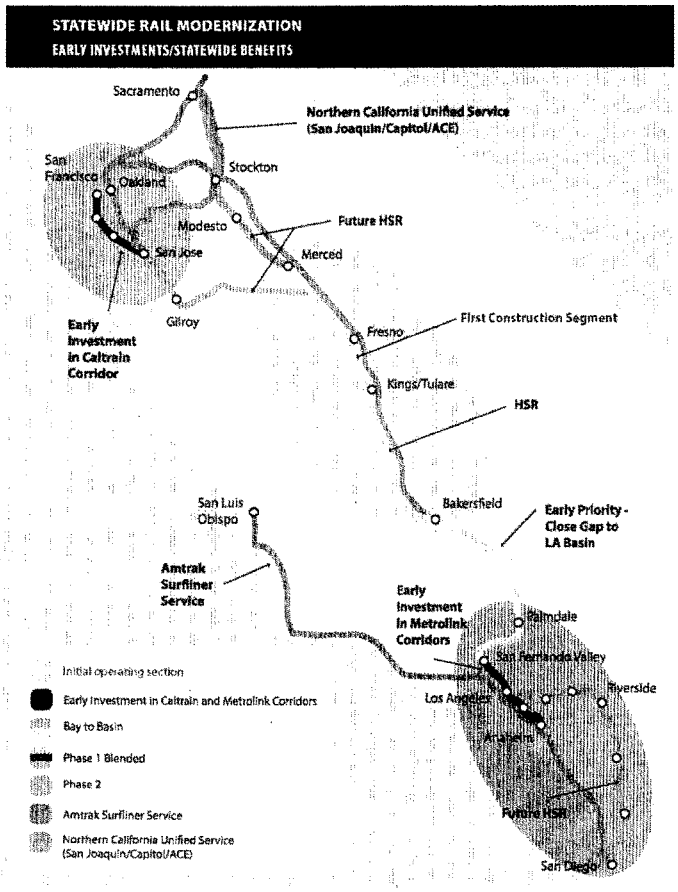
3. *Advanced Technology Demonstration*: The Authority has the opportunity to demonstrate America's capacity to design, build, and operate world-class high-speed rail service through the Central Valley. This segment will demonstrate the American rail industry's technological and operational capabilities.

4. *Project Readiness and Funding Availability*: The readiness of this segment to begin construction—as well as the statutory requirement for Recovery Act funding to be expended by the end of FY 2017—was a major factor in this decision. The environmental documents for all of the Central Valley segments will be complete in mid-2014.

5. *Growth and Environment*: By 2050, the Central Valley will have more than 13 million people; if it was its own state, it would rank 5th in the nation, more populous than the current populations of Illinois, Pennsylvania, or Ohio. The region is already showing signs of strain on area highways, and the existing airports are ill-equipped to deal with the surge in intercity travel demand that will be created by this growth. As I mentioned, the Central Valley suffers from some of the worst air pollution in the nation—Bakersfield, Fresno, Hanford, and Visalia all rank within the top 10 worst metro areas for every pollutant category analyzed in a recent air quality report.[3]

6. *Proposition 1A:* When California voters approved bonds to fund the high-speed rail system, the law they passed mandated the system connect the major cities of California, including those in the Central Valley (Fresno and Bakersfield).

[3] American Lung Association, *Most Polluted Cities: State of the Air, 2011*. http://www.stateoftheair.org/



Statewide Network Integration Service Development Planning

The phased development of the California High-Speed Rail Project is consistent with FRA's philosophy of integrated service planning. Integrated service planning includes multiple transportation modes such that passengers, when planning a trip, can move easily between modes in transit from their origin to their destination. In the California context, this principle involves integration of the extensive state-supported intercity passenger rail network, the heavily-used commuter rail networks in California's metropolitan areas, and the nation's leading thruway bus network (already integrated with intercity passenger rail service). As a result, the phased implementation of the California High-Speed Rail Project, as it grows, will be fed not only by

people traveling to terminal points, but also by an extensive integrated passenger transportation network, that will cast a wide net of origin and destination points.

In our corridor investments and planning efforts, FRA has promoted the development of passenger rail that is integrated with existing rail capacity and other transportation modes, maximizing the user and public benefits at every phase of implementation. In California, FRA is working with rail partners to plan an integrated system beginning with the first section to be constructed in the Central Valley. It will include planned funding for investments in existing commuter corridors, and future investments in intercity passenger and freight rail corridors.

Recent Project Activity

Significant progress has been made on this important infrastructure investment in the last few years. Of course, major infrastructure projects involve a certain amount of risk, which is why as good stewards of federal funds we use our grant agreements and a rigorous oversight regime to protect the federal investment in the California project. FRA continues to believe that this project will result in substantial benefits for California and the nation as a whole. The following is a summary of some of the recent activity relevant to delivery of this project.

Procurement

In June 2013, following an evaluation and selection process designed to obtain the best overall value, the Authority approved the award of the design-build contract for first construction package (CP1) to the California-based Joint Venture, Tutor Perini/Zachary/Parsons. This first Design/Build Contract was executed in August 2013.

CP1 extends from Madera to Fresno. Since contract award the Design Build Contractor has been finalizing design, and preparing for initial construction activities such as utility relocation, building demolition and clearing and grubbing. Heavy construction activities are expected to begin in the spring of 2014 with construction of the Fresno Trench, the Tulare Underpass and foundations for the Fresno River crossing.

Environmental Reviews

FRA and the Authority continue to work diligently on meeting their environmental responsibilities including the environmental analysis and documentation required under the National Environmental Policy Act (NEPA) and other environmental laws. As mentioned above, the Board is now a cooperating agency on all project-level EISs moving forward. The U.S. Army Corps of Engineers is also a cooperating agency on most NEPA reviews since it will be responsible for making permit decisions on those portions of the project that impact waters of the U.S. under Section 404 of the Clean Water Act (33 U.S. C. § 1344) and under 33 U.S.C § 408 for the proposed projects being analyzed in those EISs.

It is important to note that FRA and the Authority have been planning the HST system and analyzing its potential environmental impacts, both beneficial and adverse, for over a decade. FRA and the Authority have adopted a tiered approach to environmental clearance for the HST

system. As part of this process, FRA and the Authority published two Program-level environmental documents in 2005 and 2008. All subsequent project-level documents "tier" off of the analyses and decisions made at the program-level.

At the project-level, we continue to advance the environmental reviews for the individual sections of the HST system. Focusing on the Central Valley, in August 2011 FRA and the Authority published the draft environmental impact reports/environmental impact statements (EIR/EISs) prepared under the California Environmental Quality Act (CEQA) and NEPA for the Merced to Fresno and Fresno to Bakersfield sections of the HST system for public review and comment. Comments on the draft EIR/EISs were accepted until October 2011.

The Merced to Fresno Final EIR/EIS was published in December 2011 and FRA issued its Record of Decision in September 2012. However, in response to public comments and to minimize project impact, new alternatives were added to the Fresno to Bakersfield Section and a Revised Draft EIR/Supplemental Draft EIS was released for public review and comment in July 2012. The public comment period ended in October 2012. The Fresno to Bakersfield EIS is ongoing with a Final EIR/EIS planned for early this year and an agency decision in the spring.

FRA and the Authority are also working on the required CEQA and NEPA environmental reviews for the other Phase 1 sections of the California HST system.

Surface Transportation Board Proceeding

In March 2013, the Authority filed a Petition for Exemption and a Motion to Dismiss the Petition for Exemption to the Surface Transportation Board (Board) for the construction of the Merced to Fresno line segment of the California HST System. In April and June 2013 the Board issued decisions finding that it has jurisdiction over the project and granting the Authority's Petition for Exemption. The Board also authorized construction activities between Merced and Fresno subject to the Authority's compliance with the mitigation measures identified in the Final Environmental Impact Statement (EIS), which are designed to minimize and avoid the adverse impacts of the project.

On September 26, 2013, the Authority filed another Petition for Exemption, this time covering the Fresno to Bakersfield line segment. In its petition, the Authority also requested that the Board make its decision before the Fresno to Bakersfield environmental review process is completed. In December 2013, the Board denied the Authority's request for an expedited decision on the petition for the Fresno to Bakersfield and extended the period for public comment. However, the Board did not deny the Authority's Petition for Exemption and public comments will be accepted until February 14, 2014.

We understand the Board's desire for a fully transparent proceeding appropriately allowing for full public participation. We will continue to work with the Board in its role as a cooperating agency on the remaining FRA led project-level EISs.

State Litigation

The Sacramento County Superior Court recently issued two decisions regarding the high-speed rail project. First, in *Tos vs. California High-Speed Rail Authority,* Kings County, California and two private citizens brought suit against the Authority alleging that it had violated the terms of Proposition 1A, the state statute providing $8 billion in bond funds for the HST System, when it approved a funding plan required by the statute. Though the court found that the November 3, 2011 funding plan required by Proposition 1A was inconsistent with the statute's requirements, the court did not permanently prohibit the Authority from accessing Proposition 1A funds or enjoin the Authority from continuing with the project. The Authority has informed FRA that it can and will take the necessary steps to respond to the ruling.

Second, in what is commonly referred to as the "validation action", the Authority and the California Finance Commission commenced an action against all interested parties asking the court to find that the State of California can validly issue Prop. 1A bonds. In November 2013, the court issued a decision denying the validation judgment because it found the record of proceedings did not contain certain required information. Like the judgment in *Tos*, the Authority has informed FRA that it can and will take the necessary steps to respond to the court's ruling.

Next Steps

- *Monitoring and Oversight*: FRA's primary role is to ensure that the federal High-Speed Intercity Passenger Rail program grants result in projects delivered on-time and on-budget. We have a comprehensive grants monitoring plan in place, and will use contractors for additional oversight and technical assistance as the project moves to construction, similar to the approach used by other DOT agencies.

- *Environmental Studies*: FRA will continue to work with the Authority, the Board, and the U.S. Army Corps of Engineers in the development of the Federal and state environmental reviews to support and inform permit decision-making for the California High-Speed Rail System.

- *Finalization of the 2014 Business Plan:* The Authority is currently in the process of developing a 2014 Business Plan, with an expected release of the Draft Plan in the spring.

- *Initial Construction*: Construction is scheduled to begin in the Fresno area in the spring of 2014.

Conclusion

In closing Mr. Chairman, the Administration continues to believe that the business and public investment case for this project is strong. FRA takes its role of overseeing public rail investments seriously, and we will continue to work with the Authority, Congress, and other stakeholders to ensure that the project moves forward in a responsible and efficient manner. We understand there will be many challenges in implementing such a complex project, but strongly

believe that high-speed rail is vital to California's future and to the future of the nation. Secretary Foxx and I look forward to working with you to make this historic project another in a long line of proud examples of America's ingenuity and innovation. I would be happy to address any questions the Committee might have.

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Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on "A Review of the Challenges Facing California High-Speed Rail"
January 15, 2014

Karen Hedlund
Deputy Administrator
Federal Railroad Administration - USDOT

Questions for the Record

Dear Chairman Denham:

Thank you for the opportunity to appear and testify at the January 15, 2014 hearing of the Subcommittee on Railroads, Pipelines and Hazardous Materials regarding California's High Speed Train (HST) system. Responses to the Subcommittee's additional questions for the record are provided below.

Questions from Chairman Denham:

1. **The FRA and California High Speed Rail Authority recently amended the Funding Contribution Plan to allow for a further delay in the provision by California of its matching funds. This revision is required to be reviewed and approved by the FRA, please explain the process FRA has in place for reviewing and approving such changes, including who within the agency approved the change. Please provide the FRA's detailed written justification for why such a change was approved.**

   The California High-Speed Rail Authority (CHSRA) submitted its required Funding Contribution Plan (FCP) on January 31, 2014. Federal Railroad Administration's (FRA) Office of Program Delivery, Office of Chief Financial Officer, and Office of Chief Counsel all reviewed the document for issues that fall within their areas of expertise. Where necessary, FRA requested clarification from the CHSRA about the FCP. CHSRA edited the document to provide the additional clarification necessary for FRA to feel satisfied that it reflected the most current information to justify its approval. FRA's Senior Project Manager for California High-Speed Rail who works in the Office of Program Delivery signed the approval letter on February 21, 2014 in response to a revised FCP resubmitted by CSHRA for FRA approval on February 20, 2014.

   FRA approved the FCP that CHSRA submitted in February 2012 because we determined that it accurately reflected the timing for expected expenditures toward the Project and the funding contributions at the time of approval. The FCP also reflects the Governor of California's sizable pledge of additional funding for the project though the state's cap and trade program. The Governor included in his budget proposal an initial $250 million in cap and trade funds for the project. This proposal became a reality on June 15, 2014 when the California legislature passed a budget that includes $250 million in cap and trade funds that

can be used for the Project this fiscal year. The Budget also includes additional funds from the cap and trade program available in future years to provide a continued source of state investment in the project.

2. **Will the FRA exercise its authority under the grant agreement to recover 100% of all expended federal grant funds if the state does not meet its match requirement? If not, please explain why the FRA would not do so.**

   The Cooperative Agreement (Agreement) between FRA and CHSRA provides FRA with the rights necessary to protect the Federal taxpayer's investment. Under the Agreement, FRA has the right to enforce CHSRA's commitment to provide matching funds, including through several potential remedies. The authority to exercise these rights is in the agency's discretion and they are intended to provide maximum flexibility in addressing any potential issue that may arise.

3. **For each invoice turned over, please give the breakdown of the total costs of the services, including any state-paid amount, and of the total costs of services, the federal share requested.**

   While the Authority usually provides a description of the costs it incurs for each invoice in the supporting invoice narrative, the invoices themselves do not include a detailed cost breakdown for each individual service or line item for which funding is requested. As such, the invoices do not show the Federal and state shares for each service or line item included in the invoice. That detailed record is kept by the grantee and is subject to FRA review during monitoring which includes a targeted review of invoices and supporting documentation.

3.A. FRA0115.

- **Please explain further the types of outreach conducted in Fresno and Palmdale, including what topics were addressed and to whom they were addressed.**
  - In general, these efforts involved stakeholder outreach conducted pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The efforts are further summarized in the environmental documents for each project section including any relevant alternatives analysis and environmental impact report(s)/environmental impact statement(s). With the exception of the information contained in the environmental documents, FRA does not have a list of all outreach meetings conducted and the topics that were discussed. This type of information is normally collected and retained by the Authority's consultants who draft the environmental documents.

- **In Merced-Fresno, please explain the small business/industry forum. What was the purpose? What issues were addressed? Who participated?**
  - The small business/industry forums included workshops in the Central Valley, including one held in the City of Merced. The workshops were conducted in May, June, July, August, October and November of 2013 and focused on

providing technical assistance for on-the-spot online certification of small businesses from the California Department of General Services. Information on State of California procurement opportunities was also shared. FRA does not have a list of the participants.

- **For San Jose-Merced, please identify any Parsons Transportation Services staff whose wages or costs were reimbursed if those individuals were former U.S. Department of Transportation employees.**
  - FRA does not maintain a list of former Department of Transportation employees who are currently employed by Parsons Transportation Services.

3.B. FRA0118.

- **To the extent Task 1.7 included PMT Tasks 1,2, and 5, please explain how much was spent on those tasks in total, and the source of the state's 50% for those specific PMT Tasks 1,2, and 5.**
  - Invoices to FRA do not include the Authority's Program Management Team (PMT) contract task numbers. Instead invoices are tracked according to the FRA grant task number. The detailed expenditures by PMT contract are monitored by the Grantee but are subject to further FRA review and verification during monitoring.

- **For each entity described in Task 1.7 for whom costs were paid, please give the breakout of the amount paid to each entity.**
  - Vendor Name & Amount Invoiced
    California Department of Fish & Wildlife - $69,488.46
    California Department of Transportation - $1,436,226.72
    California State Land Commission - $5,577.29
    Capitol Corridor Joint Powers Board - $60,213.95
    City of Fresno - $178,072.63
    County of Fresno - $1,197.70
    Kaplan Kirsch & Rockwell LLP - $13,396.89
    Parsons Brinckerhoff - $1,122,772.05
    Pacific Gas & Electric - $150,300.00
    Remy Moose Manley LLP - $88,253.50
    San Joaquin Regional Rail Commission - $20,469.97
    Southern California Edison - $113,661.86
    Southern California Regional Rail Authority - $8,110.26
    TOTAL - $3,267,741.28

3.C. FRA0120.

- **Please explain further the document publications and public notices/meetings discussed at the meeting with the Authority's External Affairs department.**

- The PMT meets regularly with the Authority's External Affairs department to discuss the status of the environmental process and the related upcoming milestones, dates for publication of environmental documents, and public notices and meetings as required in the CEQA and NEPA environmental processes.

- **If these documents and notices were for environmental reviews, please explain the role of the Authority's External Affairs department with regard to those items.**
  - The Authority's External Affairs department is notified of upcoming environmental milestones including publication of environmental documents. The department helps to ensure that the public is aware of the upcoming public meetings/notices and the availability of environmental documents so that the public has the opportunity to participate in the environmental process.

3.D. FRA0152.

- **Please explain the outreach to Merced elected officials, stakeholders, and property owners. What kind of outreach was conducted? What issues were discussed? Who was contacted and why?**
  - In general, these types of outreach efforts involve providing a status update of the environmental review process consistent with CEQA and NEPA. Please contact the CHSRA for specific information on who was contacted and the issues that were discussed during the outreach meetings.

- **Please provide the presentation Regional Manager Ben Tripousis gave to the "Good Morning San Joaquin" program.**
  - See the following link for presentation: http://www.sjpnet.org/PDFs/High-Speed_Rail.pdf

3.E. FRA0173-0174.

- **Please provide a copy of the Public Involvement Plan.**
  - The Public Involvement Plan submitted to the CHSRA as required per contract is currently being edited by the Design Build Contractor to incorporate comments by the CHSRA. We will provide a copy when final edits are made.

3.F. FRA0181.

- **Please provide the exact cost for each item including the stationary, office furniture, coffee services, and electronic appliances paid for by the federal grants.**
- **Explain why those costs are considered eligible for payment with federal funding under the grant.**
  - FRA does not require the grantee provide the exact cost for every individual expenditure with each invoice. The grantee is responsible for keeping track of the cost of supplies, which FRA may request at any time and/or may be subject to FRA review during monitoring. FRA has a robust monitoring program that includes targeted reviews of invoices and supporting documentation. The items

listed are considered supplies if they are under $5,000. Under 49 CFR § 18.3, *"supplies"* is all tangible personal property other than *"equipment"* as defined. *"Equipment"* is all tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Supplies are also allowable per 2 CFR 225, Appendix B.

Questions from Representative Valadao:

1. **The FRA and California High-Speed Rail Authority (Authority) have announced that they are "curing" the Merced to Los Angeles Initial Operating Section (IOS) controversy by first building a much shorter "Usable Segment". This revelation obviously raises many questions.**
- **What exactly will be the FRA's redefined first "Usable Segment"?**
- **From what spot on the earth to what spot on the earth?**
2. **Within the IOS there are five "planned" stations allowable by Proposition-1A (Merced, Fresno, Bakersfield, Palmdale & Los Angeles). The Kings/Tulare Regional Station is only a "purposed" station and was not authorized by Proposition-1A.**
- **Where will the FRA position the required two stations in the first redefined "Usable Segment"?**
- **Will the first redefined "Usable Segment" be between Merced and Fresno?**
- **Will the first redefined "Usable Segment" be between Merced and Bakersfield?**
- **Will the first redefined "Usable Segment" be between Fresno and Bakersfield?**
- **Have Ridership Studies for the redefined first "Usable Segment" been completed?**
- **Does the Ridership Study for the redefined first "Usable Segment" indicate that the segment will operate without any government subsidy?**
- **Will high-speed electric trains operate on the redefined first "Usable Segment" when it is completed?**
- **Will positive train control be incorporated into the redefined first "Usable Segment"?**
- **Where will the rolling stock to be used on the redefined first "Usable Segment" come from and at what cost?**
- **Will electric Amtrak high-speed trains operate on the redefined first "Usable Segment"?**
- **Will these Amtrak trains operate without a subsidy?"**
- **Is it legal for the Authority to operate non-high-speed trains on any "Usable Segments"?**
3. **The Hanford East Alignment was recently approved by the Authority as the "Preferred Alignment". The Authority also reflected that the alignment would cost in excess of $7 billion to connect Fresno to somewhere in the north end of Kern County, but not all the way to Bakersfield. The Authority staff assessment did not appear to factor in things like electrification, acquisition of rolling stock, positive**

train control, and costs associated with building/operation under and along 10-miles of 115,000-volt High-Voltage Transmission Lines in Kings County.

- **Assuming that the Authority can convince the court to release the state appropriated $2.7 billion to match the $3.3 billion ARRA grant (combined $6-Billion), where will the extra billions come from to connect Fresno to Bakersfield?**
- **Would that proposal provide independent utility as required by the ARRA grant given Amtrak already connects Fresno to Bakersfield?**

4. **If the IOS is being redefined as a shorter first "Usable Segment", when will these detailed construction plans be released to both the public and local governments, so that they can coordinate with the Authority and FRA to positively influence the construction of this largest transportation project in the US?**
5. **Assuming that the Authority cannot convince the court to release the state appropriated Proposition-1A bonds for sale, what funds has the Authority identified to the FRA to match the $3.3 billion ARRA grant? Please list sources and amounts and whether those amounts are currently available for expenditure by the Authority**
6. **Does it matter to the FRA if the Authority does not provide the ARRA match?**
7. **What is the FRA's plan to address the Authority's potential failure to start matching ARRA funds on April 1, 2014?**
8. **What is the FRA's $3.3 billion independent utility explanation for replacing an Amtrak route between two cities with another train route between the same two cities while serving fewer people in the process?**
9. **To my knowledge, the FRA never answered constituents of our colleague Rep. Valadao's National Environmental Policy Act (NEPA) due process questions submitted in 2012. The individuals requested a meeting with the FRA to discuss and correct due process problems that they believed were apparent, brought forward, and never corrected by the FRA. They requested the meeting in good faith more than a half a dozen times.**

- **Instead of granting a meeting, the FRA referred the matter to the FRA's Office of Civil Rights (OCR) to investigate. The matter was logged as OCR Complaint 2013-0020. After almost a year, the OCR rendered a decision that did not address the issues of the complaint. The OCR agreed to meet with those individuals about the matter, but so far has failed to do so and has been silent for almost 6-months.**
- **Why has the FRA failed to schedule the aforementioned meeting?**
- **How long will it take for the FRA to meet with those individuals who have expressed serious concerns regarding their right to due process?**

10. **Almost a year ago, constituents of our colleague Rep. Valadao submitted FRA FOIA 13-229; the FRA has not released that information and has not provided an explanation for the lengthy delay. The FOIA request did not involve a security matter and stemmed from a due process investigation that was declared finished.**

- **When will the FRA release the FOIA information requested?**

11. **With all of the significant changes in the California High-Speed Train Project, will the FRA require a recirculation of the certified Merced – Fresno and yet to be**

certified Fresno – Bakersfield Environmental Impact Statements to comply with the spirit and intent of NEPA?

12. **Does the FRA still believe that any "Usable Segment" of the California High-Speed Train Project (CHSTP) can still be legally built while complying with Proposition-1A and all other laws, and still be completed by October-2017?**
13. **Knowing what the public and Congress know about the CHSTP and the concerns that have been expressed by many regarding future funding, will the FRA exercise due diligence and withhold ARRA funding to the Authority**?

I will address as many of these questions as possible. However, several questions are related to issues of state law or process and should therefore be addressed by CHSRA. For example, a number of Representative Valadao's questions are related to the "Usable Segment." The term "Usable Segment" is a legal term of art from California state legislation AB 3034, also known as Proposition 1A. This term is not used by FRA and is not referenced in the Cooperative Agreement between FRA and CHSRA. Pursuant to the Cooperative Agreement between FRA and CHSRA, CHSRA is obligated to complete preliminary engineering and environmental analysis for Phase 1 of the California HST System and ultimately design and construct the First Construction Section (130 miles) between the City of Madera and just north of the City of Bakersfield.

Funding for the First Construction Section is provided through two FRA High-Speed Intercity Passenger Rail grants. Through the Agreements, the state of California is required to contribute non-Federal funding to the Project. The anticipated source of that non-Federal contribution is Proposition 1A funds. However, Governor Brown has also identified in his current budget proposal an additional funding source, known as "Cap and Trade" funds, which provides another substantial funding source for the California HST system. The California legislature recently passed a budget that includes $250 million that the Authority can use for the Project and identifies a continuing source of revenue in the coming fiscal years. The Governor's proposal demonstrates California's commitment to ensure that all Federal funds are matched in accordance with FRA's Cooperative Agreements and the most recently approved Funding Contribution Plan for the Project. FRA has not found CHSRA to be in violation of the terms of the Agreement; therefore, there are no grounds to withhold Federal funding at this time. FRA expects the Authority will deliver on its obligation to complete the Project as it is defined in the Cooperative Agreements. The FRA will continue to exercise its due diligence in the proper monitoring and oversight of the Project throughout its delivery to ensure compliance.

CHSRA is advancing final design and construction between Madera and just south of the Fresno station (Construction Package 1) and is scheduled to begin construction activities in May 2014. Following completion of the environmental review process for the Fresno to Bakersfield Section, CHSRA anticipates award of a contract for the next phase of final design and construction (Construction Package 2-3) in December 2014. The remaining construction packages (Construction Packages 4 and 5) are anticipated for award in 2015. The Authority will make the detailed construction plans available to the public as design is completed for each of the five construction packages. The First Construction Section will be designed and constructed to accommodate electrified high-speed train operations and CHSRA is currently participating in a

joint procurement with Amtrak for high-speed electric trainsets. Details on that procurement can be found on the CHSRA website at:
http://www.hsr.ca.gov/docs/newsroom/archives/ATK_14_011_Amtrak_Ca_Request_Bids_Hi_Speed_Trainsets.pdf

Each project section of the California HST System (i.e. Merced to Fresno and Fresno to Bakersfield) terminates at a station located in a major metropolitan city (e.g. stations in Merced and Fresno). However, the Fresno to Bakersfield Section also includes a potential station location in the Kings-Tulare Region. CHSRA and FRA completed the environmental review processes for the Merced to Fresno and Fresno to Bakersfield Sections of the California HST System which included a detailed analysis of the potential station locations. The environmental review was based on the appropriate level of design necessary to analyze the potential beneficial and adverse environmental impacts of the Project. FRA will consider any modifications to the Project as design progresses consistent with the legal requirements of NEPA.

With respect to operations, FRA's Agreements with CHRSA require that the FRA investment demonstrate independent utility or "operational independence" and stipulate funding may be used for Positive Train Control (PTC) for this purpose. For the latest publicly released information on ridership and revenue forecasts as well as CHSRA's commitment to operate service with no subsidy, please see the following documents on CHSRA's website:

Ridership and Revenue Forecasts:
http://www.hsr.ca.gov/docs/about/ridership/ridership_revenue_source_doc5.pdf

Funding and Finance:
http://www.hsr.ca.gov/docs/newsroom/fact%20sheets/High-Speed%20Rail%20Funding%20and%20Finance.pdf

Finally, Representative Valadao asked a series of questions regarding the status of FRA's response to questions from his constituents regarding a due process claim in 2012. FRA provided a written response and determined that the requested remedies were outside of the jurisdiction of FRA's Office of Civil Rights. FRA has also completed the Freedom of Information Act (FOIA) request (FRA FOIA 13-229) and transmitted the response and related documents to the requestor.

House T&I Committee Questions for the Record
"A Review of the Challenges Facing California High-Speed Rail"
January 15, 2014

Questions for
Karen J. Hedlund
Deputy Administrator
Federal Railroad Administration

Questions from Rep. Corrine Brown

1) **What is FRA doing to help conduct appropriate oversight of federal taxpayer dollars provided for high-speed and intercity passenger rail projects generally?**

FRA has developed and implemented a comprehensive oversight program for projects funded by the High-Speed Intercity Passenger Rail (HSIPR) program. The oversight program includes day-to-day monitoring of federal investment by FRA's subject matter experts and formal monitoring activities that include programmatic reviews (scope, schedule, and budget), compliance reviews (terms and conditions of the grant agreement) and fiscal reviews (identification of fraud, waste, and abuse).

In Fiscal Year 2013, FRA conducted formal monitoring activities on projects totaling approximately $8.5 billion in awarded HSIPR program funds. Formal monitoring activities are continuing in 2014 and will be further supplemented this spring through a partnership with the Department of Transportation's Volpe National Transportation Systems Center (Volpe). This partnership will provide FRA with additional oversight expertise using Volpe's subject matter experts and expert resources from 10 competitively procured contractor teams. These additional resources will join with FRA to provide additional oversight and technical assistance using new monitoring procedures developed by FRA.

FRA has either placed or is currently hiring project managers in the field for to oversee major HSIPR corridor programs where collectively 85 percent of all program funds are concentrated. These new field staff will be supported by FRA headquarters staff and the contractor teams mentioned above.

Moreover, the Government Accountability Office (GAO) and Department of Transportation Office of Inspector General (OIG) have issued 10 audit reports, with 28 recommendations, on HSIPR, grants, and PRIIA implementation. In addition, OIG recently initiated an audit of FRA's grant amendment process. FRA welcomes the auditors' perspectives and recommendations, which supplement FRA's comprehensive oversight program.

2) **What is FRA doing to help conduct appropriate oversight of federal taxpayer dollars provided specifically for all aspects of the California high-speed rail project to ensure that it moves forward and meets its obligations?**

As with any FRA grant, our primary responsibility with the California High-Speed Rail Project is to protect the federal taxpayer's investment. Consistent with the Common Grant Rule, FRA is committed to continued oversight and management of the grant agreement, which contains strong protections of the taxpayers' investment.

To oversee and monitor FRA's grant agreements with the California High Speed Rail Authority (CHSRA) FRA's oversight team is currently comprised of a full-time FRA Senior Project Manager stationed in Sacramento, CA supported by technical staff at FRA Headquarters and oversight contractor staff located in California. FRA and its contractors have daily interaction with CHSRA and routinely attend project meetings. In addition to day-to-day oversight, FRA has also conducted formal monitoring activities in accordance with its oversight program.

In spring 2014, FRA will transition other contractors into the project through a partnership with the Department of Transportation's Volpe National Transportation System Center (Volpe). FRA anticipates that some of the contractors will be stationed in California full-time. Monthly multi-day on-site monitoring meetings will be held between CHSRA and FRA. At key milestones, contractors will conduct intensive project reviews for scope, schedule, cost, risk, and technical capacity and capability of CHSRA's expanded team. On an as-needed basis, FRA will conduct other specific reviews for safety/security, financial planning, railroad system planning and operations modeling, and other issues. FRA and its federal partners at Volpe will conduct these oversight reviews focusing on proactive engagement, dialogue, accountability, and problem solving.

In March 2013, GAO issued an audit report[1] on the California program, finding that most cost, ridership, and revenue estimates were reasonable. GAO recommended that FRA improve its estimating guidance, and we will implement an action plan to address the recommendation for future grantees.

3) Are there sufficient protections under the grant agreement for federal taxpayer dollars? What rights does FRA have if the Authority fails to meet its obligations?

Yes. The grant agreement between FRA and CHSRA provides FRA with the rights necessary to protect the federal taxpayer's investment. It does so in two important ways. First, in addition to FRA's oversight of the project as described above, the grant agreement requires CHSRA to provide FRA with information at various stages of project development. This includes written notice of certain issues that may arise outside of the grant agreement but may still be relevant to CHSRA's ability to deliver the project including adverse decisions in litigation. These notice requirements provide FRA with the information necessary to manage the project and make timely and well-informed decisions.

Second, under the grant agreement FRA has the ability to enforce the CHSRA's commitment to the federal taxpayer and to ensure accountability. This includes the right to suspend or terminate the agreement and, in certain circumstances, FRA has retained the right to require the CHSRA to repay the entire grant (or appropriate portion thereof). These are discretionary decisions that

[1] GAO, *California High Speed Rail: Project Estimates Could be Improved to Better Inform Future Decisions*, GAO-13-304 , March 29, 2013

FRA would make in light of the information available at the time. While FRA retains the right to suspend and terminate the grant agreement, FRA has full confidence that the CHSRA understands its obligations and will take all necessary steps to comply. In this regard it is important to note that the CHSRA is a political subdivision of the State of California and as such the CHSRA's legal commitments to the FRA are commitments of the State of California.

STATEMENT OF
DAN RICHARD
CHAIRMAN OF THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY
BOARD OF DIRECTORS

BEFORE THE
SUBCOMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

January 15, 2014
2167 Rayburn House Office Building
Washington, DC

Chairman Denham, Ranking Member Brown, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the California High-Speed Rail Program as part of the Subcommittee's ongoing oversight. I am Dan Richard, Chairman of the Board of Directors of the California High-Speed Rail Authority (Authority). In this testimony, I will clarify why this investment is critical to California's future prosperity and, thusly, of national importance. I will then provide a brief summary of the additional benefits associated with the Authority's plans for delivery of the system. Lastly, I will detail the Authority's progress to date and lay out our next steps in developing this critical transportation investment.

WHY HIGH-SPEED RAIL?

Accommodating the Transportation Needs of a Growing Population

The starting point for considering why California is investing in high-speed rail is the reality that California is not only the nation's most populous state, but among its fastest growing. In the 35 years I've lived in California, the population has grown from 22 million to approximately 38 million people. Sometime in the next 35 years, we will exceed 50 million citizens, a gain equivalent to adding the population of Ohio. Clearly, California must make critical infrastructure investments, including adding significant transportation capacity, to accommodate this growth and to keep our economy thriving.

Already, California's 170,000 miles of roadway are the busiest in the nation. Auto congestion drains $18.7 billion in lost time and wasted fuel from the state's economy every year. Meanwhile, travel on our Interstate system is increasing at a rate five times faster than capacity is added. Flights between Los Angeles and the Bay Area airports – the busiest short-haul market in the U.S. with over 8 million passengers annually – are the most delayed in the country, with approximately one of every four flights late by an hour or more. Meeting the existing transportation demands of our society, as well as accommodating future growth, will require major investments in new transportation capacity. The question is not whether those investments need to be made, but which ones are most efficient, effective, and able to provide the greatest benefits.

One thing is clear: California cannot provide an effective transportation system for 50 million to 60 million residents with a "more of the same" approach.

Yet, as you know well Mr. Chairman, California faces many constraints in just meeting our current problems, let alone addressing long-term challenges created by population growth. We face serious environmental constraints on growth, from ensuring that our children's air is clean to breathe, to protecting of our water resources, and preserving our uniquely bountiful farmland. In the face of these environmental realities, it is neither practical nor desirable to expand our existing network of roads and airports. It is also significantly more expensive, more impactful, and more difficult to achieve than expanding our state's transportation system capacity through an investment in high-speed rail.

The leaders of our state, including not only this Governor but many of his modern predecessors, as well as our Legislature and the people themselves, have determined that the development of an advanced high-speed rail system is a wise choice for meeting our mobility needs. The people of our state endorsed this view in 2008, when they voted to support issuing almost $10 billion in bonds as the first step to develop this system. Shortly after that vote, President Obama and Congress provided additional support to begin developing high-speed rail service in the United States.

As the Chair of the Board of Directors of the Authority, my fellow Board members and I are committed to building and implementing the first high-speed rail system in the United States. While we know this program has been controversial, we enjoy the strong, sustained support of Governor Brown, our Legislature, the bipartisan mayors of our largest cities, business leaders throughout the state, and the opinion of several major metropolitan newspapers.

Our mission is to provide critical linkages between our economic mega-regions, which are vital to the nation's economy, and, by 2030, provide a way for people to travel between San Francisco and Los Angeles - and major cities in between - in under three hours. Our vision is that business commuters, leisure travelers, and tourists will be able to travel quickly, conveniently, and comfortably to and between the hearts of our vibrant urban centers. Like systems in Europe and Asia, when travelers arrive at their destination they will be able to make easy, seamless transfers to urban transit systems like Metro and Metrolink in Los Angeles, Bay Area Rapid Transit (BART), Muni in the San Francisco Bay Area, and the Santa Clara Valley Transportation Authority in the Silicon Valley, or to one of our intercity rail lines, like the Amtrak San Joaquin service and the ACE train in the Central Valley, to continue their journey wherever it may take them.

Facing the Realities of Transformational Infrastructure Investments

For these reasons, and with the need for high-speed rail abundantly clear, Californians took a bold step toward a better future by passing an initiative approving bonds for construction of a high-speed rail system in 2008. Proposition 1A did not call for more studies. It called for action.

Chairman Denham was then in the State Senate, and voted in favor of putting Proposition 1A on the ballot. The legislation he and the majority of State Legislators approved (along with a majority of state voters) authorized $9 billion in state bond proceeds to support a program that was projected in 2008 to cost $45 billion. Proposition 1A assumed that the balance of the program would be funded through federal and private investments. At that time, there had not been a dime of federal funding provided to California or any other state for high-speed rail. Nor was there a clear plan for attracting the private investment. But there was an intent and strong commitment to achieve these goals and make the program a reality for California. And this approach was based, in part, on how other nations around the world have successfully implemented high-speed rail systems to meet their long-term transportation needs. Today, we have $3.3 billion in federal funds committed and a clear plan for how to attract and utilize private investment.

In 2011, Governor Jerry Brown declared his solid support for high-speed rail, but only after bringing in a new team to turn it around and provide new leadership going forward. In 2012, we issued the revised Business Plan, which showed a clear path and a framework for implementing the system through a phased, integrated approach. This then provided the basis for the California Legislature to appropriate funding later that year to begin construction on our first usable section in the Central Valley. Since then, we have moved forward aggressively and have made tremendous progress in a short amount of time for such a massive endeavor.

Unfortunately, many people mistakenly believe this can be accomplished overnight. Reality is far different. Those of you familiar with implementing regional rail systems, like the Bay Area Rapid Transit System (BART) or the Metro system in Washington DC, know that these systems are built out over time and as funding becomes available. You also know that advancing once-in-a-generation infrastructure projects is always complicated and never without controversy. BART was called a boondoggle. Over 2,300 lawsuits were filed to stop construction of the Golden Gate Bridge. The California State Water Project passed by a single-vote margin. Decades later, no one in California regrets those tough decisions. Their impact on our economic prosperity has been enormous. Where would California be if leaders at the time had not persevered?

While I do not want to minimize the import of recent decisions regarding the high-speed rail program in California Superior Court, the reality is that dealing with those sorts of challenges is the nature of delivering major, and in this case, generational infrastructure projects. We will address and resolve them.

As we determine the best way to respond to the court rulings, California remains in compliance with the terms of our grant agreement with the U.S. Department of Transportation and we will continue to work closely with them.

Furthermore, it is important to note that California has already issued $400 million in Proposition 1A bonds that have been used to advance the program to this stage. Since entering into the Grant Agreement with the Federal Railroad Administration (FRA), approximately $100 million in state funds have been spent against $275 million in federal dollars. The state is continuing to contribute money to the program and meet its obligations under the Grant Agreement.

STATEWIDE BENEFITS: IT'S NOT JUST HIGH-SPEED RAIL

While many are tempted to view high-speed rail as simply a conveyance system between two urban centers, international experience shows that a well-integrated and well-planned high-speed rail program can produce benefits far beyond quick and efficient intercity travel. We believe that high-speed rail's economic, environmental, and ancillary transportation benefits are an important, if often neglected, topic in the conversation about the California High-Speed Rail Program.

Economic Benefits

Keeping our businesses connected to each other and to other companies around the world is critical for keeping our economy moving. This is evidenced by California's growing demand for intercity travel – both by rail and by air. Over 8 million passengers per year fly between Bay Area and Los Angeles area airports.[1] Even though we lack a critical rail link between Northern and Southern California, which we hope to close as quickly as possible, our Capitol, San Joaquin and Pacific Surfliner corridors rank second, third, and fifth in the nation,

[1] Research and Innovating Technology Administration Bureau of Transportation Statistics

carrying over 5.5 million passengers annually. Between 1997 and 2012, ridership on these three intercity passenger rail corridors grew by 256 percent, 66 percent, and 61 percent respectively.[2]

Beyond providing these critical linkages to spur the economy, building and operating the high-speed rail system will directly employ tens of thousands of Californians while indirectly generating tens of thousands more jobs throughout the larger economy.

The Central Valley has been hit particularly hard by the national recession, with the construction industry in the area facing some of the highest rates of unemployment in the state. High-speed rail construction will create 20,000 jobs annually for the next five years. These jobs will go to the people who need them the most, providing a significant boost to both the local economy in the Central Valley and the economy of the rest of the state as a whole.

In addition to construction jobs, we anticipate considerable permanent employment associated with operating and maintaining the high-speed rail system. From train operators and maintenance yard workers to station managers and operations planners, high-speed rail will create permanent jobs that will always remain here. For example, the Initial Operating Section, once fully operational, is expected to directly employ an estimated 1,300 people.

Our plan, consistent with the Bond Act, is to follow the State Route 99 alignment and connect the major cities of the Central Valley to the urban hubs of San Francisco and Los Angeles. Some critics have proposed that we follow Interstate 5, preferring to leave the economically challenged Central Valley out of all the benefits associated with high-speed rail. We believe, as the voters did in passing Proposition 1A, that high-speed rail must connect cities like Fresno, Merced, and Bakersfield to major population centers in order to revitalize the state's economy and create a more unified California. While the Central Valley has historically been bypassed by major investments, like I-5, our vision is to connect the entire state for the first time. Not only is this the right thing to do from a public policy standpoint, it's the law.

Furthermore, despite claims of high-speed rail's impact on farmland, we know that the number one threat to California's prime agricultural land is urban and suburban sprawl. Not only will the tangible impact of high-speed rail on Central Valley farmland be relatively small in scope – about 4,500 acres affected, compared to over 100,000 acres lost to sprawl over the last decade – high-speed rail in other countries has been shown to discourage sprawl by revitalizing downtown urban areas. We believe this will also be the case in the Central Valley where encouraging livable urban communities, as opposed to sprawl across farmland would further protect one of our state's most valuable resource and the region's preeminent economic driver.

Economic Impacts and Benefit-Cost Analysis

For the 2012 Business Plan, the Authority conducted the first comprehensive economic impact and benefit-cost analysis of the system. Among other things, these analyses compared the benefits to the state and national economies relative to the costs of building, maintaining, and operating the system and estimated the potential to create short-term construction and long-term jobs.

Last year, after reviewing our economic impact analysis and the benefit-cost analysis, the Government Accountability Office (GAO) found that, "the Authority did a comprehensive job in identifying the potential

[2] Brookings Institute. A New Alignment: Strengthening America's Commitment to Passenger Rail.

economic impacts of the high-speed rail project." The GAO, like the International Union of Railways (UIC), offered constructive recommendations on ways that we might improve our analyses and we are working to address those as we prepare to update these analyses for the 2014 Business Plan.

A Statewide Rail Modernization Program for the 21st Century

The Authority's 2012 Business Plan laid the foundation for a statewide rail modernization program that called for strategic investments in urban, commuter, and intercity rail systems. These investments will provide improved connectivity to the high-speed rail system as part of an integrated statewide transportation network. To achieve this goal, the Authority is working in concert with its rail partners throughout the state, including the Department of Transportation (Caltrans), the Altamont Commuter Express (ACE), the Southern California Association of Governments (SCAG), the Peninsula Corridors Joint Powers Board (Caltrain), and the Southern California Regional Rail Authority (Metrolink), to name a few. Linking rail systems will greatly improve the state's mobility and economic competitiveness, and reduce greenhouse gas emissions.

Ridership growth in California's urban transit systems demonstrates that there is demand for greater mobility and connectivity through public transportation, particularly by rail. These improvements will build upon already growing ridership, which in turn will increase demand for connections to and with the high-speed rail system when it is implemented. All of these investments in concert will create a new, modern statewide rail network that will keep California moving for decades to come.

One often unheralded aspect of this modernization program is the implementation of Positive Train Control (PTC) not only for high-speed rail, but on many of California's commuter rail lines. PTC has been mandated by both Congress and the Administration; however its implementation throughout the country has been a complicated, slow, and arduous process. With high-speed rail, not only will Californians receive a more integrated and efficient rail system, they will be able to rest assured that their commutes and long-distance travel are safely in compliance with federal law.

Environmental Benefits

Though I have largely focused on the need for high-speed rail in California and its role in improving the state's economy, Californians also strongly support the environmental benefits of this transportation project.

As you may be aware, in 2006, California passed the Global Warming Solutions Act, commonly referred to as AB 32, which called for the state to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020, and then by 2050 to further reduce GHG emissions to 80 percent of 1990 levels. One of the key strategies the state is employing critical to reducing GHG emissions is an integrated alternative to single-occupancy vehicle trips. The high-speed rail system, combined with existing transit, commuter, and intercity rail systems, as well as strategic land-use decisions, will result in significant reductions in GHG emissions, improving air quality statewide. In its 2008 Scoping Plan, the California Air Resources Board (CARB) listed the high-speed rail system as "one of the significant state projects" to make a positive contribution on the issue of global climate change.

Indeed, the environmental benefits of the California High-Speed Rail Program are some of the best-kept secrets about the project. The Authority is committed to developing a project that is sustainable and implements best "green" practices from design to construction to operation.

Key environmental benefits associated with the program include:

- Greenhouse gas savings from the first year of operations increasing to over 1 million tons of CO2 per year within 10 years.
- Conservative estimates show that operation of the high-speed rail system will save an estimated 4 to 8 million metric tons of CO2 by 2030. This is equivalent to the savings that would be generated by the state turning off a coal fired power plant.
- Operations will result in net GHG emissions diversions that, conservatively, are the equivalent of the GHG emissions created from the electricity used in 22,440 houses, or removing 31,000 passenger vehicles from the road.
- A commitment to offset construction emissions so that there will be a net zero greenhouse gas emissions during construction.
- The Authority's construction mitigation efforts will result in cleaner school buses and water pumps in Central Valley communities.
- A commitment to using 100% renewable energy during operations.
- High-speed rail around the world has proven to be a driver of transit and more sustainable land use practices. The Authority is committed to achieving these goals for greater cumulative benefits for the state.
- The Authority has developed agricultural conservation measures aimed at reducing Central Valley sprawl and preserving valuable agricultural land.
- Implementation of strict guidelines for sustainability best practices for design-build contracts to minimize impacts and improve air quality.

PROGRESS TO DATE AND NEXT STEPS

We are proud of the progress we've made to date and are focused intently on continuing the work that has already begun on the first construction section of the Initial Operating Section (IOS). Completing the IOS will achieve the State's goal of closing the rail gap between Northern and Southern California and our goal of introducing the first fully operational high-speed rail service in the nation. Our efforts going forward are focused on building the Central Valley project and then completing the IOS as expeditiously as possible. The Central Valley project is fully funded, as are bookend projects between San Jose and San Francisco as well as Palmdale and Los Angeles. We are now looking forward to developing solid public private partnerships to implement the IOS and the statewide system.

Getting to Work

At the June 6, 2013 Board of Directors meeting, the Authority awarded the first major design-build contract for Construction Package 1 (CP 1), a 29-mile stretch from Madera County to North Fresno. The contract was awarded to the Joint Venture of Tutor Perini/Zachry/Parsons (TPZP) based on their fixed price bid of $985, 152,530. Work on CP 1 commenced on August 16, 2013 when the Authority and TPZP executed the final contract and a Limited Notice to Proceed (NTP) was issued.

In October 2013, the Authority issued an NTP-1 for an amount up to $78,000,000, meaning that pre-construction work could commence. TPZP and the Authority's Project and Construction Management consultant have moved into offices in historic downtown Fresno, bringing 65 full-time jobs to the area. TPZP is currently focused on acquiring properties and equipment, finishing design work, utility relocation, archeological work, permit finalization, and geo-technical surveying. Not only has TPZP's presence been felt in the commercial real estate sector of Fresno, but across the area's economy. This includes contracting with local small businesses such as Precision Engineering, Inc. as well as patronizing the many establishments of downtown Fresno.

We have also made significant strides on the second construction package of the first construction segment in the Central Valley, known as CP 2-3. In October 2013, the Authority started the process of selecting a design-build contractor for CP 2-3 by issuing a Request for Qualifications. On December 18, the Authority received five bids from world-class construction teams to finish the design work on and then build this 60-mile extension from Fresno to north of Bakersfield.

The estimated $1.5 to $2 billion contract will also bring thousands of jobs to the Central Valley while continuing completion of the IOS.

Building Partnerships for Success

The last time I appeared before this Subcommittee, we had just recently reached groundbreaking agreements with the Merced and Madera County Farm Bureaus to protect and preserve agricultural land as well as mitigate the effects of high-speed rail construction on the Central Valley's agricultural industry.

Since that time, the Authority has entered into several additional partnerships that will continue to guarantee high-speed rail's added value to the taxpayers of California and the nation. As part of the Subcommittee's ongoing oversight role in the development of this program, I would like to take this opportunity to provide you with an update on these critical endeavors.

In May, the Authority entered into a Memorandum of Understanding (MOU) with the U.S. Minority Business Development Agency to expand the utilization of Central Valley Minority Business Enterprises during the initial construction of the high-speed rail system. We remain committed to ensuring the people of the Central Valley reap the maximum amount of economic benefits associated with construction. This agreement is one of many measures aimed at that goal.

The Authority's Board of Directors also affirmed its commitment to a national high-speed rail network in September by approving an MOU with Amtrak to join forces in the search for high speed rail train sets. This search for trainsets will bring down costs and encourage domestic industry while securing trains capable of speeds up to 220 mph on both Amtrak's Northeast Corridor (NEC) and on California's high-speed rail system.

In June, the Authority took another major step towards developing a modern, integrated statewide rail network by agreeing to transfer work on the Altamont Corridor rail service to the San Joaquin Regional Rail Commission. This agreement will allow for local control of near-term improvements to speed up and increase ACE service on the existing tracks and plan for regional service connections to Modesto and Merced.

Most recently, the Authority entered into a Strategic Partnership Agreement with the California Department of Veterans Affairs that not only makes sure disabled veteran-owned businesses know about the high-speed rail project, but also that those businesses are prepared for the project's many job opportunities. We plan to continue

strengthening this agreement as the project moves into the heavy construction phase to ensure that our nation's veterans benefit from high-speed rail as much as possible.

Administration and Oversight: Government Employees Making Government Decisions

Since completing the 2012 Business Plan, we have made great strides in bringing together a world class team to lead the implementation of the program. One noteworthy criticism of the program in years past was that it relied too heavily on consultants and that key leadership positions were vacant. To that end, since early 2012, we have filled all of the positions on our Executive Team with highly qualified individuals with proven records on infrastructure project management and delivery. We have added critical state employees at the Authority to take over the work formerly done by consultants, yet we will remain lean and rely on support from the private sector, as this strategy best suits the project due to the flexibility and innovation such a structure promotes.

In addition to growing our headquarters team in Sacramento, we have brought on three Regional Directors and regional staff, to ensure we have a strong presence across the state and in local communities as well as guarantee the Authority is working directly with stakeholders and citizens affected by the project. We are pleased to have our Central California Regional Office open in downtown Fresno as well as offices in San Jose and Los Angeles.

As we have been building our team, I am pleased to report that many issues raised by the Legislature, the Peer Review Group and the California State Auditor have also been resolved. Specifically, in January 2012, the California State Auditor, tasked with providing "nonpartisan, accurate, and timely assessments of California government's financial and operational activities in compliance with generally accepted government auditing standards," released a report recommending the Authority take several actions related to the management and implementation of the high-speed rail project. In total, this report made 23 recommendations related to consultant oversight, risk management, expenditure tracking and cost reporting, staffing, information technology, and contracting practices. To date, the Authority has fully implemented 18 of the Auditor's 23 recommendations, with the remainder either partially implemented or pending the release of the 2014 Business Plan. As we continue to improve these processes and implement the recommendations, we are pleased the State Auditor recently stated that, "the Authority has made tremendous progress."

Improved Communications and Outreach with Business and Property Owners

The Authority is committed to working with the communities impacted by, and ultimately benefiting from, the high-speed rail project. By firmly recommitting to working with the residents and civic leaders of those areas along the high-speed rail alignment, we have been able to dramatically change the public's experience when working with the Authority in a positive way.

This has been especially evident in the mending of relationships with residents of the Central Valley. Members of our Board of Directors and staff continue to meet individually with affected property owners, civic leaders, and advocacy groups. In the last 18 months, over 600 meetings have been held in the region. Additionally, we have hosted meetings regarding the Central Valley Wye, which will serve as the junction for high-speed rail trains, in Fairmead and Chowchilla.

We have also worked to develop positive relationships with the communities that will be impacted. One example is our partnership with the City of Fresno and the Fresno Economic Development Corporation to open a "One-Stop Shop" in Fresno City Hall to provide resources to businesses along the alignment. Our Central

Valley staff has also been committed to keeping residents of the area informed and engaged in the process. This extensive outreach will help serve as a model for community interaction for the project in the months and years ahead.

We have continued to work with the agricultural community to mitigate potential impacts in the Central Valley. Specifically, we successfully settled three lawsuits regarding outstanding environmental issues on the Merced to Fresno project section. The most recent settlement, reached in April 2013 between the Authority and several Central Valley farm bureaus, ultimately resulted in agreements to preserve important farmland and mitigate effects of high-speed rail construction on agricultural operations.

Another agricultural partnership success story was realized in spring 2013 when we entered into a contract with the California Department of Conservation (DOC) that represented the culmination of an agreement between the Authority and the agricultural interests in the Central Valley. This agreement had been in the works for several years and will be critical to our commitment to preserve important farmland. This preservation program will guarantee that, for every acre of farmland impacted, at least one acre of farmland will be preserved in perpetuity. This will occur through the purchase of conservation easements. The DOC, which has longstanding experience with land management and easements, will be administering the program.

In addition to the activities in the Central Valley, the Northern and Southern California Regional Directors have been busy making connections with members of the public, property owners along potential alignments, and local leaders while forging agreements with local and regional transportation partners.

Future Funding Including the Role of the Private Sector

Our current plan estimates that the total cost, in fully inflated dollars, to build a high-speed rail system connecting Los Angeles with San Francisco, will be $68 billion (equating to approximately $53.4 billion in constant year 2011 dollars). To date, we have assembled approximately $13 billion in funding, through a combination of state bonds and federal appropriations. We know that this Committee and the public at large are interested in our plans for future funding to complete the system.

As this Committee knows well, any major infrastructure project of this size and complexity would require funding from a combination of federal, state, or local sources. In the case of California's high-speed rail program, we have the additional opportunity to include significant private sector investment in the funding matrix. As outlined in the 2012 Business Plan, our peer-reviewed projections indicate that once we have constructed the Initial Operating Section (IOS) from Merced to the San Fernando Valley, the system's operation will generate net operating cash flows. This has been the near universal experience of high-speed rail systems around the world, namely, that once they are built and are in service (i.e., once the capital is expended) the systems generate net positive operating cash flows. Some high-speed rail systems have generated enough cash to go even further and pay back some of the initial capital expenditure.

Like all projects of this magnitude and at this stage in their development, a precise funding plan for the entire system is not possible; however, we plan on funding it from a combination of sources including the following:

Cap and Trade Funding

This past Friday, Governor Brown released his 2014-2015 budget proposal for the state of California. His proposal features a substantial investment in statewide rail modernization as part of the

Administration's commitment to using cap and trade revenues to reduce greenhouse gases and modernize interregional transportation. These funds will help build out the statewide high-speed rail system while making upgrades to urban, commuter and intercity rail networks—a catalyst for transit-oriented and sustainable communities' development.

Specifically, the budget proposal includes $58 million for planning and $191 million for construction and right of way acquisition during the first phase of the high-speed rail program's development. The funding also includes $50 million for urban, commuter and intercity rail operators. Proposed legislation establishes an ongoing state commitment of cap and trade proceeds to high-speed rail.

For the reasons stated above, we believe that the environmental benefits associated with high-speed rail make our project a worthy recipient of these Cap and Trade proceeds. In fact, the original Scoping Plan produced by the California Air Resources Board in 2008 identified high-speed rail as a targeted, effective use of Cap and Trade proceeds.

The Governor's 2014-2015 budget should further instill confidence in California's commitment to this critical endeavor.

Direct Private Sector Investment

As discussed above, we plan to operate the high-speed rail system as a public-private partnership, with an initial public sector investment. Once this initial investment is made, we would essentially sell the projected future revenue stream to the private sector, giving them the rights to operate the system. Our 2012 Business Plan projects that the Bay Area to Los Angeles Basin system would generate enough revenue to cover approximately 20 percent of its capital costs. This number would increase with higher ridership or a lower discount factor.

We are confident in this model based upon the experience of international high-speed rail operators as well as our discussions with private sector representatives, which will be detailed later in this testimony.

Private Sector Revenues from Value Maximization

The 520 mile Los Angeles/Anaheim to San Francisco high-speed rail system will be a valuable economic resource. We are beginning an assessment of value maximization including leasing of right-of-way for fiber optic cable pathways and energy development. Additionally, ancillary revenues will come from parking, advertising, marketing and other potential sources including real estate development. It should be noted that in Japan, approximately one-third of revenues realized by the private sector operator Japan Rail East, come from rents and leases associated with real estate development at and around high-speed rail stations. The California Legislature is considering legislation to allow tax increment financing for development around our high-speed rail stations and we see enormous opportunities for value capture from transit-oriented development.

Once the IOS has been completed and operational, the opportunity for private investment is greatly increased and those private funds can be used to pay for further system expansion. Additionally, conversations with potential private sector investors have helped us refine our plans to optimize our ability to leverage private sector funds and expertise, while giving the taxpayers the most 'bang for their buck.'

Federal Funding – Reauthorization of PRIIA and Tax Policy

As already noted, we have evaluated how high-speed rail systems are implemented, funded and financed around the world. We continue to draw on international experience and lessons learned – both positive and negative – to develop a business model that fits our national and state context. As previously discussed, we are following the model where the public sector makes the initial investment which then, if done properly, attracts private investment. To that end, we will forge a public-private partnership to implement our program. Further, as the federal government invested in the Interstate Highway System – because it was good for our economy – we believe that it is reasonable for the federal government to continue investing in intercity and high speed passenger rail systems, like California's.

As the committee looks ahead to reauthorizing the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), we have some general views on how federal assistance should be structured for projects like ours, and would like to offer them for the Subcommittee's consideration.

A review of the variety of high-speed rail projects being proposed nationwide makes it clear that there is no single model for developing, financing, and operating intercity passenger rail in this country. In California, we are seeking to develop high-speed rail. So are Texas, Nevada and the states along the NEC. In the Midwest, Northwest and Florida, lower speeds are being considered. Different project delivery methods and different financial plans come along with the choice for the type of service to be provided in a given corridor.

With this diversity in mind, we believe the federal government should make available a variety of forms of assistance to high-speed rail projects around the country. For our program here in California, a blend of federal grants and loans would likely be the most beneficial form of federal investment. But aside from making direct financial assistance available, the federal government can also help us attract private investment by using the tax code to create investment incentives. Tax credits and deductions have been used over decades to induce private equity and debt investment for projects that bring public benefits. When Congress wants to channel investment to worthy infrastructure projects, it has created and enhanced these types of incentives. If Congress is looking – as we are – to bring private investment into our project, sending the right signal to the investment community through the tax code would be one way to help make that happen.

Timing of Private Sector Investment

The high-speed rail system will neither be entirely a public works project nor will it be a fully privatized system. It will be a partnership between the public sector (federal, state, and local) and the private sector. This is an internationally proven investment model and is common to almost all recent high-speed rail projects in the world, where capital investment begins with the public sector and then becomes shared with the private sector. Demonstrating this relationship, systems in France, Spain, and The Netherlands all attracted private investment once ridership was established or by using availability-based public-private partnership structures.

These examples demonstrate that the critical question is not *whether* the private sector will invest in high-speed rail but *when* is the optimal time for the private sector to invest in the program? In the absence of completion and revenue guarantees, the private sector will want to see a proven revenue stream from a completed project prior to their willingness to invest.

If we seek private investment too soon, we will be shifting too much risk to the private sector which would reduce the amount of investment the private sector would be able to provide and require more public funds. Instead, we intend to follow the example of countless systems from around the world that have used an initial investment of public funds to demonstrate the system's financial potential and then leveraged that performance to bring in the private sector. To us, this is a clear choice, it is based on lessons learned from international systems, and we are confident that this approach will maximize private sector investment over the course of the system's development. Let me be clear, our door is certainly open to any alternative private sector investment models that they wish to suggest.

In its review of the Authority's plans, the GAO confirmed that this is the right order for public and private investment. The GAO stated that "our past work on high-speed rail systems has shown that private sector investment is easier to attract only after the public sector has made a substantial capital investment in the system. The Authority's plan is consistent with this funding approach."[3]

Discussions with Private Investors

To understand the private sector's specific interest in this program, the Authority has had extensive input from and discussions with potential private sector participants. In 2011, the Authority issued a Request for Expressions of Interest (RFEI) and received more than 1,100 responses. The responses identified the capability and interest of private entities related to development, financing, operations, project scale, risk appetite, and other factors.

Following up on the results of the RFEI, in January 2012, the Authority met with eight infrastructure investment firms, which confirmed their interest in investing in the program. We also had extensive discussions regarding the appropriate timing for private sector investment.

Elements of cost, schedule, and delivery risk are already being transferred to the private sector through the use of design-build contracts for the construction that will be starting soon here in the Central Valley. As the system is further developed, the Authority will look to increase its transfer of risk to the private sector by incorporating an operating performance element. The Authority will continue to assess private capital markets, as market conditions, financing tools, and expectations change over time.

CONCLUSION

In closing, I would like to thank you again for allowing me to provide you with an update on the exciting progress the Authority has made towards implementing the nation's first high-speed rail system. I hope I have succinctly conveyed why we believe high-speed rail is not only a critical investment for the future of California, but a common sense investment as well. With the benefits of our program so clearly extending well beyond simple conveyance of Californians from one end of the state to the other, we believe this project is of national importance – as are high-speed rail investments from coast to coast. I look forward to continuing to work with the Subcommittee to ensure that the nation's first high-speed rail system is built correctly, cost-effectively, and in the best interest of the nation's and California's taxpayers.

[3] GAO Report 13-304 (http://www.gao.gov/assets/660/653401.pdf)

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March 26, 2014

The Honorable Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines and Hazardous Materials
Committee on Transportation and Infrastructure
1730 Longworth House Office Building
Washington, DC 20515

Dear Chairman Denham:

Thank you for your letter of March 11, 2014 regarding my appearance before the Subcommittee on Railroads, Pipelines and Hazardous Materials on January 15, 2014 to discuss the California High-Speed Rail Authority's (Authority) effort to deliver the nation's first high-speed rail system. I appreciate the opportunity to provide more details on these topics for the record.

In the interest of clarity, I have restated the questions below and provided my responses:

At the hearing we discussed the initial construction segment (ICS) at length. Several legal opinions were mentioned, can you provide legal counsel opinion for how the ICS is a useable segment under state law and therefore how it will be compliant with Proposition 1A requirements?

Please see the attached opinion from the Legislative Counsel of California produced at the request of State Senators Simitian and DeSaulnier in June 2012. The Legislative Counsel found that, "the construction of the initial 130-mile segment in the central valley complies with the bond act requirement to commence construction with a useable segment."

Also, please provide legal counsel opinion for how ICS and the CHSR project, in general, is eligible for funding from the new state cap and trade law.

The Global Warming Solutions Act of 2006 (AB 32) required the California Air Resources Board (ARB) to prepare a Scoping Plan to achieve reductions in greenhouse gas (GHG) emissions in California. The Scoping Plan was originally approved in 2008 and identified California's high-speed rail program as an appropriate investment for proceeds generated by the Cap and Trade Program due to the significant reductions in GHG emissions that will result from operations. Once operational, high-speed rail will eliminate over 12 billion pounds of GHG emissions annually; the equivalent of taking one million cars off California's roads and highways per year.

You can find the original 2008 Scoping Plan, as well as later iterations of the plan (which also identify high-speed rail as a priority for AB 32) here:
http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm

EDMUND G. BROWN JR.
GOVERNOR

770 L Street, Suite 800 Sacramento, CA 95814 • T: (916) 324-1541 • F: (916) 322-0827 • www.hsr.ca.gov

While we are unaware of any specific legal opinions on the legality of the Governor's budget proposal for Cap and Trade proceeds investment, we defer to ARB as they are the preeminent experts on the subject and have been entrusted with such determinations by the Legislature.

At the hearing we discussed a private proposal to aid with the California High Speed Rail Project. Can you provide a summary of the French railway company, SNCF's, proposal to help build the California High Speed Rail Project?

As I stated at the hearing, SNCF's expression of interest in the high-speed rail program predates my time on the California High-Speed Rail Authority Board. However, my understanding is that SNCF made a presentation to the Authority with some of their thoughts on financing, but did not make a specific offer to provide risk capital towards construction.

In 2010, the Authority asked for information on investment interest through the Request for Expressions of Interest (RFEI) process and SNCF provided a detailed response. SNCF's response indicated they would not take ridership risks that included risks related to completion of construction. Therefore, their proposal relied on the state to deliver the necessary infrastructure and begin operations before they would consider revenue risk. This is consistent with the model presented in the Authority's Business Plan – which assumes a private sector operator will pay for the rights to operate the system. This payment(s) would in turn be used to construct further segments.

SNCF also suggested that the Authority go through a procurement process to enter into a pre-development agreement with a private operator. The reasoning behind this suggestion was that involving the eventual operator of the system in the planning and design would create efficiencies. For multiple reasons outlined below, SNCF's expression of interest did not advance further.

Since this subject was raised by Congressman Williams in the context of private sector-based rail endeavors in other states, I would like to state for the record our understanding of how those programs are structured. We strongly support other rail improvement projects, such as those being pursued in Florida, Nevada, and Texas. They are critical investments, not only for their locales, but for advancing an improved nationwide rail system. As such, we are in contact with those entities to learn from their experience, exchange information, and work collaboratively to advance rail service. However, it is also important to note some distinct differences between those privately devised plans and ours.

First, the notion that they are entirely private is inaccurate. Their proposals depend on public investment and support in various forms. Generally this either means direct loans (e.g., Railroad Rehabilitation & Improvement Financing), publicly-funded grade separations, public support for completing environmental reviews, or other factors.

Second, they are not complete systems like we are building in California, but rather single lines. By mandate, we are building a system that is required to connect all population centers in California, not just the most lucrative and profitable. Their proposals do not take into account any feeder services or off-peak services that may not generate the greatest profits, but are essential to achieving the goals of high-speed rail in California. So, while we support those efforts whole-heartedly, it is important to place our plans in context when discussing the two in relation to each other.

Can you also provide an explanation of why that proposal was turned down?

SNCF's ideas were not turned down, because their expression of interest never advanced to the proposal stage. SNCF's response to the RFEI suggested they believed it was premature at that time for them to make a proposal to provide capital investment in the project.

We have not pursued the type of pre-development agreement suggested by SNCF primarily because the State cannot enter into sole source agreements. Furthermore, we are confident that we have taken operational considerations into our design of the project and have relied extensively on international experience to do so. SNCF was not proposing any investment of capital, but rather was seeking rights to develop and then presumably operate the system.

Engaging a private partner exclusively at such an early stage, when no environmental approvals had been secured and alignment decisions had not been made, would have meant shifting risks to a private party that they could not manage. Therefore, the party would have to price that risk at a level that would be unreasonable for a public agency and simply unaffordable. Additionally, bringing a private company into the decision making process regarding environmental reviews and alignments would not be in the public's best interest.

Also of note is the fact that our CEO met with the CEO of SNCF in 2012 to discuss an inaccurate story in the Los Angeles Times regarding SNCF's expression of interest. SNCF's CEO was surprised by the content of the article, and made it clear that those quoted in the article had no association with SNCF and no authority to speak on their behalf.

Thank you again for following up on these issues. I look forward to continuing to work with you to deliver the nation's first high-speed rail system in California.

Sincerely,

Dan Richard
Chair, Board of Directors

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LEGISLATIVE COUNSEL BUREAU
925 L STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 341-8000
FACSIMILE: (916) 341-8020
INTERNET: WWW.LEGINFO.LEGISLATURE.CA.GOV

June 8, 2012

Honorable Joe Simitian
Room 2080, State Capitol

Honorable Mark DeSaulnier
Room 5035, State Capitol

HIGH-SPEED RAIL - #1211030

Dear Senators Simitian and DeSaulnier:

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

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

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

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

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

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

I. The Bond Act

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

II. Summary of the Revised Business Plan

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

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

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

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

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

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

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

III. Analysis of the Revised Business Plan

A. Construction Priority for the Phase 1 Corridor

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

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

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

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

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

[6] See footnote 4.

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

B. Design Characteristics

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Maximum Travel Times

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

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

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

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

With respect to the San Jose-Los Angeles segment, which, when completed, would operate entirely on a new high-speed rail alignment, we are not aware of any facts indicating that the required 2 hour, 10 minute nonstop travel time is not achievable. With respect to the San Francisco-San Jose segment, which under the revised business plan is proposed to be constructed as a blended system rather than on a new high-speed rail alignment, and by extension, the overall San Francisco-Los Angeles segment, which would incorporate the blended segment, compliance with the bond act is not clear. We reviewed with the authority the results of the LTK study for the Caltrain Joint Powers Board entitled "Caltrain/California HSR Blended Operations Analysis" (March 2012) (hereafter LTK Study) which identified somewhat longer high-speed train running times for several operating scenarios between San Francisco and San Jose, namely 45, 43, and 37 minutes (LTK Study, pp. 46-50). In addition, these running times were based on the current Caltrain station, located at 4th and King Streets, being the San Francisco terminus, rather than the more remote Transbay Terminal (LTK Study, p. 15).

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

2. Operating Headways

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

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

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

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

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

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

3. Transitioning or Bypass of Intermediate Stations

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

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

4. The Full-Build Option

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

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

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

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

IV. Proposed Fiscal Year 2012-13 Appropriations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"2704.08. ...

* * *

"(c) ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *"

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

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

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

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

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

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

(...continued)

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

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

(continued...)

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

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

V. Analysis of the MOUs

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

A. Proposition 1A High-Speed Rail Funds

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

1. Bay Area MOU

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

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(...continued)

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

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

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

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

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

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

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

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

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

2. Southern California MOU

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

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

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

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

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

3. Central Valley MOU

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

B. Proposition 1A Connectivity Funds

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

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

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

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

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

VI. Summary

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

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

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

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

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

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

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

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
L. Erik Lange
Deputy Legislative Counsel

LELijrp

March 3, 2014

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The Honorable Corrine Brown
Ranking Member
Subcommittee on Railroads, Pipelines and Hazardous Materials
Committee on Transportation and Infrastructure
2111 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Brown:

Thank you for your letter of February 12, 2014 seeking clarification on the State of California's 2014 Five-Year Infrastructure Plan. I appreciate the opportunity to provide more details on this topic, as it was the subject of some mischaracterization at the Subcommittee on Railroads, Pipelines and Hazardous Materials' hearing held on January 15, 2014.

In the interest of clarity, I have restated the question below and provided my response:

During the hearing, Chairman Denham handed out page eight from The 2014 California Five Year Infrastructure Plan and stated that the California High Speed Rail Authority "is anticipating $20 billion coming from the Federal Government" based on "next year's budget." Is this an Authority document? Can you please clarify whose document that is and what the document represents? Is the Authority expecting or relying on $20 billion in Federal funds to move forward with the project?

First, I want to be clear that the Five-Year Infrastructure Plan referred to by Chairman Denham at the hearing is not produced by the California High-Speed Rail Authority. Rather, it is a report authored by the California Department of Finance as required by the California Infrastructure Planning Act of 1999 (Assembly Bill 1473). It is not a budget proposal, but more akin to a needs assessment that identifies necessary investments in California's infrastructure over the coming half-decade.

As you know, the Authority currently has approximately $13 billion in Federal, State, and Local funds dedicated to the high-speed rail program. The Federal portion of this funding totals approximately $3.3 billion, and the projected rate of expenditure of that money is laid out in a Funding Contribution Plan (FCP), which is updated quarterly. Unfortunately, the FCP was mischaracterized at the hearing when Chairman Denham suggested that the Authority "owes" the Federal Railroad Administration (FRA) $180 million on April 1, 2014.

In fact, the FCP is updated every quarter to reflect expenditures to date and update projected future expenditures. This, in turn, influences the pace of projected future contribution levels from the Federal and State governments. It is not meant to be a payment schedule, but a "living document" that addresses the status of the program on a forecasted basis.

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For example, the December 2012 FCP Chairman Denham referred to at the hearing projected that, as of April 2014, the FRA would have expended $925 million and that California would have expended $63 million, as noted specifically by Ms. Dolan of the Congressional Research Service in her testimony. There was never a requirement or projection in the grant agreement or any other documents for the State to provide $180 million on April 1, 2014.

In actuality, as of December 31, 2013, federal disbursements are $255 million and state disbursements are $95 million. Those federal disbursements are obviously well below the previously-projected April 2014 level of $925 million, and the state disbursements are ahead of pace. The FCP was subsequently updated on February 21, 2014 to reflect these facts.

In order to advance the program to an operational phase, we will need further funding, which is identified as $25 billion in the Five-Year Infrastructure Plan. This projection of needs does not provide a breakdown of the makeup of those funds, nor is there any anticipation of $20 billion coming from the federal government.

Rather, this additional funding could come from a number of sources including proceeds from California's Cap and Trade Program, local governments, or even the private sector. To be clear, we also expect further federal investment in this critical program. As your Committee looks ahead to reauthorizing the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), we have some general views on how federal assistance could be structured for projects like ours, but do not naively expect federal grants on the order suggested by Chairman Denham during the January 15th hearing.

In light of the variety of high-speed rail projects being pursued nationwide, we believe there are many creative options for developing, financing, and operating intercity passenger rail in this country. From loans to private sector investment incentives, we want to work with Congress and other high-speed rail programs to create new funding opportunities for our project and those in other states.

Thank you again for following up on this critical issue and for your leadership on high-speed rail development across the country. If you should need more information on California's high-speed rail program, or have any further questions on this particular issue, please do not hesitate to contact me.

Sincerely,

Dan Richard
Chair, Board of Directors

Statement of Alissa M. Dolan
Legislative Attorney, American Law Division
Congressional Research Service

Before

Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives

January 15, 2014

on

"A Review of the Challenges Facing California High Speed Rail"

Chairman Denham, Ranking Member Brown, and Members of the Subcommittee:

My name is Alissa M. Dolan, I am a Legislative Attorney in the American Law Division of the Congressional Research Service. I thank you for inviting CRS to testify today regarding the legal issues associated with challenges facing California High Speed Rail. Specifically, the Subcommittee has asked for a discussion of two recent California Superior Court cases, *Tos et. al. v. California High-Speed Rail Authority* and *California High-Speed Rail Authority and High-Speed Passenger Train Finance Committee v. All Persons Interested*, and specific provisions of the cooperative agreement between the Federal Railroad Administration and the California High-Speed Rail Authority regarding federal grant funds.

California High-Speed Rail and Proposition 1A Background

In 2008, California voters approved Proposition 1A (Prop 1A), the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, which was placed on the ballot following the California State Legislature's approval of Assembly Bill 3034. Prop 1A, now codified in Chapter 20 of Division 3 of the California Streets and Highways Code, provided for the issuance of $9.95 billion in state general obligation bonds to fund construction of a high-speed train between the Los Angeles and San Francisco areas.[1] Prop 1A also created specific requirements for the planning, development, construction, and operation of the system, which is to be overseen by the California High-Speed Rail Authority. In addition

[1] "Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century," AB3034, § 9, *codified at* CAL. STS. & HIGH. CODE § 2704.10.

to potential revenue from voter-approved state bonds, the Authority has also received federal grant funds, in part through the American Recovery and Reinvestment Act,[2] as discussed in detail below.[3]

Tos, et. al. v. California High-Speed Rail Authority

In November 2011, Kings County, California along with John Tos and Aaron Fukuda, taxpayers who live in Kings County, (plaintiffs) brought suit against the Authority and several state officials in the California Superior Court for the County of Sacramento.[4] The high-speed rail system is planned to go through Kings County. The suit, in part, challenged the validity of the funding plan that the Authority approved in November 2011, arguing that the plan's contents did not comply with the statutory requirements put in place by Prop 1A. The plaintiffs sought the issuance of a writ of mandate[5] that would direct the Authority to rescind its approval of the November 2011 funding plan.

Ruling on the Petition for a Writ of Mandate

In evaluating the plaintiffs' claim that the 2011 funding plan violated statutory requirements, the court applied an abuse of discretion standard of review, determining, "namely, whether [the Authority's] action was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair..."[6] In an August 16, 2013 ruling, the court concluded that "the Authority abused its discretion by approving a funding plan that did not comply with the requirements of law."[7]

Section 2704.08 of the California Streets and Highways Code establishes both procedural and substantive requirements for two funding plans that the Authority must approve at different stages of development. The first "detailed funding plan" for the "corridor, or useable segment thereof" must be approved "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 under Prop 1A.[8] The plan "shall include, identify, or certify" several pieces of information, including:

- "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";[9] and
- that "the authority has completed all necessary project level environmental clearances necessary to proceed to construction."[10]

The court determined that the funding plan did not comply with either of these requirements.

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[2] Pub. L. No. 111-5, 123 Stat. 208, Div. A, Title XII.

[3] *See, infra*, "California High-Speed Rail and Federal Railroad Administration Grant Funds".

[4] Tos, et. al. v. Cal. High-Speed Rail Auth., No. 34-2011-00113919 (filed Nov. 14, 2011).

[5] CAL. CIV. PROC. CODE § 1085(a) ("A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.").

[6] Tos, et. al. v. Cal. High-Speed Rail Auth., No. 34-2011-00113919, slip op. at 6. (Aug. 16, 2013) [hereinafter *Tos I*].

[7] *Tos I*, slip op. at 7.

[8] CAL. STS. & HIGH. CODE § 2704.08(c).

[9] *Id.* at § 2704.08(c)(2)(D).

[10] *Id.* at § 2704.08(c)(2)(K).

Identifying Funding Sources

First, the court held that the plan did not identify the source of funds for the entire "corridor, or usable segment thereof," as was required by law.[11] The funding plan identified the "corridor, or usable segment thereof" at issue in the plan as one of two potential Initial Operating Sections (IOS): a usable segment of 290 miles from Bakersfield to San Jose or a usable segment of 300 miles from Merced to San Fernando. Each potential IOS included the Initial Construction Section (ICS), which was defined as a 130-mile segment from just north of Bakersfield to Fresno. Following approval of the funding plan, the Authority submitted the request for appropriation of bond proceeds and on July 18, 2012, the Legislature appropriated bond funds for the construction of the IOS from Merced to San Fernando.[12]

The court interpreted the law to "require[] the Authority to address funding for the entire IOS,"[13] from Merced to San Fernando. Additionally, the court stated that the funds identified in the plan must be "more than merely theoretically possible"[14] and the Authority must have a "reasonable present expectation of receipt [of the funds] on a projected date, and not merely a hope or possibility that such funds may become available."[15]

The 2011 funding plan[16] satisfied this requirement with regard to the funding sources needed to complete the ICS. The plan identified approximately $6 billion dollars in state bond funds and federal grant funds that represented "the full amount of funding the Authority believes is needed to complete" the ICS.[17] However, the funding plan did not satisfy this requirement with regard to the funding sources for the remainder of the IOS, approximately 170 miles of rail. The full cost of completing the IOS was estimated to be $26 billion. The plan did not identify the specific source of these funds but rather anticipated that the additional funds would be identified not later than 2015.[18] Furthermore, the plan stated that "[t]he IOS will require a mix of funding from federal, state, and local sources to support construction in the years 2015 to 2021. Committed funding for this period is not fully identified."[19] The court described this portion of the plan as "candidly acknowledg[ing] that the [IOS] funds could not be identified as of the date of approval of the funding plan."[20] Additional discussion of funding sources in the plan identified only "theoretical possibilities and not [] sources of funds reasonably expected actually to be available starting in 2015."[21] Therefore, the funding plan failed to comply with the plain language of the statute "because it does not properly identify sources of funds for the entire IOS."[22]

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[11] *Id.* at § 2704.08(c)(2)(D).

[12] SB1029, § 9 (July 18, 2012); *see Tos I*, slip op. at 6.

[13] *Tos I*, slip op. at 7.

[14] *Id.*

[15] *Id.* at 8.

[16] The funding plan explicitly incorporated by reference another document entitled the California High-Speed Rail Program Draft 2012 Business Plan (Business Plan).

[17] *Tos I*, slip op. at 4.

[18] *Id.*

[19] *Id.* at 5. The Business Plan also states that "...with the exception of construction funding for the ICS, the mix, timing, and amount of federal funding for later sections of the [high-speed rail project] is not known at this time." *See id.*

[20] *Id.* at 8.

[21] *Id.*

[22] *Id.* at 9.

Certifying Completion of Environmental Reviews

Second, the court held that the plan did not comply with the statute requiring it to certify that the Authority had completed all necessary project level environmental clearances needed to proceed to construction. The funding plan certified that all project level clearances for the ICS would be completed at a later date, before the Authority expended any bond proceeds.

The court interpreted the statute to require the *completion* of all project level environmental clearances, not simply a promise to complete, for the *entire* IOS, not simply the ICS. Even though the text of the environmental clearance requirement does not use the term "corridor, or usable segment thereof," the court determined that the structure of section 2704.08 and its reference to "construction" "is most reasonably interpreted as pertaining to the entire 'corridor, or usable segment thereof' addressed by the funding plan, and not to the ICS, which is merely a portion of that corridor or usable segment."[23] Furthermore, the first funding plan is the only plan requiring the Authority to address project level environmental clearances. Therefore, if the first plan only required ICS environmental clearances, the Authority would not have to complete environmental clearances for the remainder of the IOS before being permitted to spend bond proceeds. The court characterized this interpretation as leading to an "unreasonable and unintended result" that would be "in fundamental conflict with the intent of the statute as a whole," and, therefore, bolstered its interpretation that the first funding plan must address environmental clearances for the full IOS.[24]

Additionally, the court rejected the notion that a certification pledging to complete the clearances in the future could satisfy a statute that required a certification that the clearances were already complete.[25] Since the funding plan only certified the future completion of ICS environmental clearances and did not address clearances for the remainder of the IOS, it failed to comply with the law.[26]

Remedies

After the court concluded that the Authority abused its discretion by unlawfully approving the 2011 funding plan, it turned to determining the appropriate remedy. The court noted that "as a matter of general principle, a writ [of mandate] will not issue to enforce a mere abstract right, without any substantial or practical benefit to the petitioner."[27] Therefore, the court had to determine if issuance of a writ would have any practical impact on the high-speed rail program.

In their original brief, the plaintiffs sought a writ of mandate that would direct the Authority to rescind its approval of the plan and all subsequent approvals it made in reliance on that plan. In a reply brief, the plaintiffs also argued, for the first time, that a writ should extend to the legislative appropriation made on the basis of the funding plan in July 2012.[28] The court first determined that it would not issue a writ of mandate relating to the 2012 legislative appropriation, for both procedural and substantive reasons. The court rejected this request on procedural grounds because "as a general rule, arguments raised for the first

[23] *Tos I*, slip op. at 10.
[24] *Id.*
[25] *Id.* at 11.
[26] *Id.*
[27] *Id.* at 12.
[28] *Id.* at 13

time in a reply brief will not be considered."[29] Substantively, the court concluded that nothing in the Prop 1A laws connected the validity of the appropriation to the funding plan's compliance with the law. Instead, "Proposition 1A appears to entrust the question of whether to make an appropriation based on the funding plan to the Legislature's collective judgment."[30] Therefore, even if approval of the funding plan was unlawful, the subsequent legislative appropriation was not invalid.

Next, the court concluded that it did not yet have enough information to determine whether a writ invalidating the funding plan and subsequent approvals by the Authority would have a practical effect on the program.[31] The parties were instructed to submit supplemental briefs providing more details about the subsequent approvals made by the Authority.

Ruling on Remedies

On November 25, 2013, the court ruled that issuance of a writ of mandate would have a real and practical effect.[32] The court concluded that creating and approving a first funding plan that complies with the statute is a necessary prerequisite to advancing the second funding plan required under section 2704.08(d), which must be approved before the Authority may expend any bond proceeds for most purposes,[33] including construction and acquisition of real property and equipment.[34] The court reached this conclusion by analyzing the text and structure of section 2704.08. It observed that only the first funding plan is required to address environmental clearances, while the second funding plan is silent on the issue.[35] Therefore, an interpretation that did not require a valid first funding plan before proceeding to the second funding plan would permit the Authority to expend bond proceeds without making the "critical certification" regarding environmental clearances.[36] In the court's view, the statute is "carefully designed to prevent" the kind of substantial delays or the need to redesign the project late in the process that may result from the Authority expending bond funds before having completed environmental clearances.[37] Therefore, a funding plan that requires the certification regarding environmental clearances must be interpreted as a necessary precursor to a funding plan that authorized the Authority to expend bond proceeds.[38] Issuing a writ that requires the Authority to rescind approval of the first funding plan has a

[29] *Id.* (citing Reichardt v. Hoffman, 52 Cal. App. 4th 754, 764 (1997); American Drug Stores, Inc. v. Stroh, 10 Cal. App. 4th 1446, 1453 (1992)).

[30] *Id.*

[31] *Tos I*, slip op. at 14. The court noted that issuing a writ invalidating all subsequent approvals may not be appropriate given that the statute states "[n]othing in [section 2704.08] shall limit the use or expenditure of proceeds on bonds... up to an amount equal to 7.5 percent of the aggregate principal amount of bonds" for the purposes specified. CAL. STS. & HIGH. CODE § 2704.08(g). It is possible that the subsequent approvals issued by the Authority could meet this requirement and, therefore, lack of compliance with the funding plan provisions should not prevent the Authority from executing those approvals. *See Tos I*, slip op. at 14.

[32] Tos, Fukuda, County of Kings v. Cal. High-Speed Rail Authority, No. 34-2011-00113919, slip op. at 2 (Nov. 25, 2013) [hereinafter *Tos II*].

[33] A funding plan is not required to be approved before up to 7.5 percent of bonds may be expended for the purposes of environmental studies, planning, and preliminary engineering activities; the acquisition of real property or rights-of-way, under certain circumstances; mitigation of environmental impacts resulting from the foregoing; and relocation assistance for owners and occupants of acquired property. CAL. STS. & HIGH. CODE § 2704.08(g).

[34] *Tos II*, slip op. at 2.

[35] *Id.* at 2-3.

[36] *Id.*

[37] *Id.* at 3.

[38] *Id.*

real and practical effect: "it will establish that the Authority has not satisfied the first required step in the process of moving towards the commitment and expenditure of bond proceeds."[39]

The court also addressed the question of whether a writ should direct the Authority to rescind subsequent approvals it made in reliance on the now-invalid 2011 funding plan. Based on the supplemental briefs submitted by the parties, the court focused on two construction contracts and whether those contracts "necessarily involve the present commitment of bond proceeds for construction-related activities"[40] that could only be expended by the Authority pursuant to the second funding plan required by section 2704.08(d). The court concluded that these contracts, which appear to be funded currently with federal grant money, do not necessarily commit bond proceeds and, therefore, the writ of mandate should not direct the Authority to rescind the contracts.[41]

With regard to these contracts, the plaintiffs argued that because the Authority is required to provide a certain percentage of matching funds for all federal grant money, the commitment of grant funds to the contracts guarantees that Prop 1A bond proceeds would eventually be spent to satisfy the matching requirements.[42] The court rejected the plaintiffs' argument for two reasons. First, the contracts contained termination clauses, meaning that since the Authority could terminate the contracts it is "not necessarily committed to spending the full face amount of those contracts."[43] Second, the court was unconvinced that the amount of federal grant funds projected to be spent on the contracts could not be matched through non-Prop 1A funds available to the Authority.[44] In other words, the court concluded that it was unclear how these contracts would be financed in the future and, thus, the use of Prop 1A bond proceeds was not yet inevitable.

Finally, the court also rejected the plaintiffs' request for a temporary restraining order or injunction prohibiting the Authority from continued expenditure of federal grant funds. The court reiterated that it was "not persuaded that the Authority's use and projected use of federal grant money necessarily amounts to the present commitment of Proposition 1A bond proceeds."[45] Furthermore, in general "the Authority's use of federal grant money is not regulated by Proposition 1A or its funding plan requirements."[46]

Legal Effect of the Writ of Mandate

The court issued a writ of mandate ordering the Authority to rescind its approval of the 2011 funding plan. Additionally, the court determined that approval of a valid funding plan under section 2704.08(c) is a necessary prerequisite to drafting and approval of the second funding plan required under section 2704.08(d), which is required before the Authority may expend bond proceeds.[47] Therefore, it appears as though the Authority must approve a funding plan that complies with the statutory requirements before it

[39] *Id.*
[40] *Id.* at 3.
[41] *Id.* at 4.
[42] *Id.* at 3.
[43] *Id.* at 4.
[44] *Tos II*, slip op. at 4. *See*, *infra*, "California High-Speed Rail and Federal Railroad Administration Grant Funds".
[45] *Tos II*, slip op. at 5.
[46] *Id.*
[47] *Id.* at 2-3.

can move forward towards using Prop 1A bond proceeds to fund construction or real property and equipment acquisition.[48]

Drawing from the court's analysis and assuming compliance with the other statutory requirements described in section 2704.08(c), the Authority will have to complete at least two tasks before seeking approval of a new funding plan. First, the Authority will have to identify funding sources for the entire IOS.[49] Based on the court's interpretation of the statute, these funding sources cannot be merely hypothetical; the Authority must have a reasonable present expectation of receipt of the funds on a projected date.[50] Second, the Authority will have to complete all necessary project level environmental clearances needed to proceed to construction for the entire IOS.[51] It appears as though the issuance of this writ of mandate has no direct effect on the Authority's ability to use federal grant funding or the California Legislature's July 2012 appropriation of bond funds.

California High-Speed Rail Authority and High-Speed Passenger Train Finance Committee v. All Persons Interested

Background

Section 2704.12 of the California Streets and Highways Code creates the High-Speed Passenger Train Finance Committee (Finance Committee or Committee).[52] The Finance Committee is charged with authorizing the issuance and sale of Prop 1A bonds upon the request of the Authority. Following the Committee's approval of bond sales, the Treasurer shall sell the bonds according to the terms and conditions specified by the Committee.[53] All provisions of the State General Obligation Bond Law[54] (Bond Law) apply to Prop 1A bonds and are incorporated into the California State and Highways Code provisions regulating California high-speed rail.[55]

On March 18, 2013, the Authority adopted a resolution requesting that the Finance Committee authorize the issuance of nearly $8.6 billion in bonds.[56] On the same day, the Finance Committee adopted a resolution authorizing this issuance.[57] The day after the Committee authorized issuance of the bonds, the Committee and the Authority (plaintiffs) filed a complaint for validation of bonds in the Superior Court of California for the County of Sacramento.[58] A validation complaint is a specific suit a public agency may

[48] *See* CAL. STS. & HIGH. CODE § 2704.08(d). However, this requirement does not prevent the Authority from expending up to 7.5 percent of bond proceeds, for specific purposes, before the funding plans are approved. *See id.* at § 2704.08(g).

[49] *See id.* at § 2704.08(c)(2)(D).

[50] *See Tos I,* slip op. at 8.

[51] *See* CAL. STS. & HIGH. CODE § 2704.08(c)(2)(K); *Tos I,* slip op. at 10.

[52] The Committee consists of the Treasurer; the Director of Finance; the Controller; the Secretary of Business, Transportation and Housing; and the chairperson of the Authority or a designated representative acting in his or her place. CAL. STS. & HIGH. CODE § 2704.12.

[53] *Id.* at § 2704.10; *see* CAL. GOV'T CODE § 16731.

[54] CAL. GOV'T CODE §§ 16720 *et seq.*

[55] CAL. STS. & HIGH. CODE § 2704.11.

[56] *See* High-Speed Rail Auth. and High-Speed Passenger Train Finance Comm. v. All Persons Interested in the Matter of the Validity of the Authorization and Issuance of General Obligation Bonds to be Issued Pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, No. 34-2013-00140689, slip op. at 11 (Nov. 25, 2013) [hereinafter Validation Ruling] (citing Authority Resolution #HSRA 13-03).

[57] *Id.* (citing Finance Committee Resolution IX).

[58] *Id.*

initiate in California state courts "to determine the validity" of an agency decision or action.[59] A state board, department, agency, or authority "may bring an action to determine the validity of its bonds…"[60] in the Superior Court of the County of Sacramento. In the validation proceeding, the state agency, the plaintiff, must publish a summons in a newspaper of general circulation chosen by the court,[61] essentially giving notice to "all interested persons to the matter" that they may contest the validity or legality of the action.[62] A successful validation claim brought by a government agency may erase any uncertainty regarding the legitimacy of the agency's actions. The plaintiffs sought a judgment determining that their actions relating to authorization and issuance of the bonds "were, are, and will be valid and binding and were, are, and will be in conformity with the applicable provisions of law…"[63]

Complaint for Validation of Bonds

In evaluating the validity of the Committee's bond issuance authorization, the court noted that the scope of judicial review in this type of action is limited.[64] Based on California precedents, judicial review of an agency's quasi-legislative action (the decision to authorize Prop 1A bonds) is limited to "whether there was substantial evidence to support the legislative decisions."[65] In other words, the court should review whether the body's actions were "arbitrary, capricious or entirely lacking in evidentiary support," rather than conduct a *de novo* review.[66]

To determine whether the Finance Committee's authorization of bonds was supported by substantial evidence in the record, the court examined the statutory requirements that applied to the Committee's decision-making process. The Finance Committee's approval of bond issuance is governed by section 16730 of the Bond Law, which applies to authorization of bonds generally, and section 2704.13 of the California Streets and Highways Code, which applies specifically to Prop 1A. Section 16730 states that the Committee "shall determine the necessity or desirability of… issuing any bonds authorized to be issued and the amount of… bonds then to be… issued and sold."[67] Similarly, section 2704.13 states that the Committee "shall determine whether or not it is necessary or desirable to issue bonds… and, if so, the amount of bonds to be issued and sold."[68]

Therefore, the legal question the court had to answer was whether there was substantial evidence in the record to support the Finance Committee's determination that the issuance of nearly $8.6 billion in bonds was necessary or desirable on March 18, 2013. The court concluded that it could find "no evidence in the record of proceedings" to support such a determination.[69] The record of proceedings submitted to the court contained little more than the text of the Authority's Resolution approving the issuance of bonds. The resolution itself contains "bare findings of necessity and desirability which contain no explanations of

[59] CAL. CIV. PROC. CODE § 860.

[60] CAL. GOV'T CODE § 17700.

[61] CAL. CIV. PROC. CODE § 861.

[62] CAL. CIV. PROC. CODE §§ 861, 861.1.

[63] Validation Ruling, slip op. at 2-3.

[64] *Id.* at 4.

[65] *Id.* at 5 (citing Morgan v. Community Redevelopment Agency, 231 Cal. App. 3rd 243, 259-60 (1991)).

[66] *Id.* The court further noted that "such limited review is grounded in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives from the view that courts should let administrative boards and officers work out their problems with as little judicial interference as possible." *Id.*

[67] CAL. GOV'T CODE § 16730 (no emphasis in text).

[68] CAL. STS. & HIGH. CODE § 2704.13.

[69] Validation Ruling, slip op. at 14.

how, or on what basis, it made those findings…[,] no summary of the factors the Finance Committee considered and no description of the content of any documentary or other evidence it may have received and considered."[70] No other supporting documents or information alluded to in the Committee's resolution were included in the record prepared by the plaintiffs for the court to review.[71]

The court rejected several arguments put forth by the plaintiffs, a selection of which are discussed below, as to why the record constituted sufficient evidence to support the Committee's decision. First, the plaintiffs argued that the Authority's request for issuance of bonds itself proved that issuance was objectively necessary or desirable. The court rejected this contention and noted that the Authority's request only proved that the Authority believed the issuance to be necessary or desirable.[72] If the Authority's subjective belief was enough evidence to validate the Finance Committee's action, the result would be an "abdication of discretion by the Finance Committee to the Authority."[73] Such an interpretation is not supported by either the Bond Law or Prop 1A provisions that specifically require the Finance Committee, not the Authority, to determine necessity or desirability. The court concluded that the "voters, in approving Proposition 1A, intended to empower the Finance Committee to serve as an independent decision-maker, protecting the interests of taxpayers by acting as the ultimate 'keeper of the checkbook.'"[74] Second, the court dismissed the plaintiff's contention that there were other sources of supporting evidence beyond the Finance Committee's resolution. The court refused to consider the public comments received in the Authority's March 18, 2013 meeting relating to the decision to issue bonds because the record showed that those comments were only received by the Authority, not the Finance Committee.[75]

Legal Effect of the Validation Proceeding

The court ruled that it had "the authority to decline to validate legislative action authorizing the issuance of bonds where," as determined in this case, "such action did not comply with applicable legal requirements."[76] Therefore, the court denied the plaintiffs a validation judgment, holding that "the Finance Committee's determination that it was 'necessary and desirable' to authorize the issuance of bonds to finance construction of the high-speed rail project as of March 18, 2013 is not supported by any evidence in the record, and therefore did not comply with an essential legal requirement."[77]

The effect of a validation judgment is governed by California Civil Procedure Code section 870. The section provides an opportunity to appeal, where a "notice to appeal [must be] filed within 30 days after the notice of entry of the judgment."[78] It further states that:

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[70] *Id.*

[71] *Id.*

[72] *Id.* at 15.

[73] *Id.* at 15-16.

[74] *Id.* at 16.

[75] *Id.* at 17. Additionally, the content of those comments is not included in the record. The court also considered, and rejected, purported supporting evidence the Committee received while in closed session on March 18, 2013 that was not visible in the record and the argument that the Finance Committee's expertise in relation to bond issuances and high-speed rail projects provided sufficient evidence. *Id.* at 18.

[76] Validation Ruling, slip op. at 19. The court considered the fact that "there are no validation cases specifically reviewing a finance committee's determination that a bond issuance is desirable" to be "essentially irrelevant" to determining the court's authority in this case. *Id.*

[77] *Id.* at 20.

[78] CAL. CIV. PROC. CODE § 870(b).

> The judgment, if no appeal is taken, or if taken and the judgment is affirmed, shall...thereupon become and thereafter be forever binding and conclusive, as to all matters therein adjudicated or which at the time could have been adjudicated, against the agency and against all other persons, and the judgment shall permanently enjoin the institution by any person of any action or proceeding raising any issue as to which the judgment is binding and conclusive.[79]

As of January 7, 2014, no judgment on the plaintiff's validation complaint has yet appeared on the California Case Management System for the California Superior Court for the County of Sacramento.[80] Prior to issuance of that judgment and a statement from the court relating to relief granted, it appears to be difficult to determine the specific effect of the denial of the validation claim. However, based on public statements, it appears that the Authority and the Finance Committee will move forward by restarting the validation process to attempt to obtain a successful validation judgment.[81] Presumably, this process will require the Finance Committee to issue a new resolution authorizing the issuance of bonds that would seek to remedy the evidentiary deficiencies identified by the court relating to the necessity or desirability of issuing bonds.

California High-Speed Rail and Federal Railroad Administration Grant Funds

In 2009, California applied for federal grant funds made available for high-speed and intercity passenger rail projects (HSIPR) in the American Recovery and Reinvestment Act (ARRA).[82] Between 2010 and 2011, the Authority was selected to receive approximately $2.5 billion in ARRA funds, through both its initial application for funds and redistribution of funds granted to other states that subsequently rejected them.[83] Additionally, the Authority received approximately $928 million in funding from the Transportation, Housing, and Urban Development and related Agencies Appropriations Act for 2010 (FY2010 grant funds), similarly through an initial selection and subsequent redistribution of funds

[79] CAL. CIV. PROC. CODE § 870(a).

[80] Search for Documents and Tentative Rulings for Docket No. 34-2013-00140689, California Case Management System, *available at* https://services.saccourt.ca.gov/publicdms/Search.aspx. The court did issue a judgment on December 12, 2013 relating to a cross-complaint for a determination of invalidity filed by the Kings County Water District. *See* Judgment Dismissing the Cross-Complaint of Kings County Water District for Determination of Invalidity (filed Dec. 12, 2012), High-Speed Rail Auth. and High-Speed Passenger Train Finance Comm. v. All Persons Interested in the Matter of the Validity of the Authorization and Issuance of General Obligation Bonds to be Issued Pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, No. 34-2013-00140689. The court granted the Authority's motion to dismiss the cross-complaint based on deficiencies in the summons the Kings Country Water District was required to issue under California Civil Procedure Code §§ 860, *et. seq*. The court's analysis on this issue is contained in a Minute Order issued on November 22, 2013. *See* Minute Order (filed Nov. 22, 2013, 9:00AM), High-Speed Rail Auth. and High-Speed Passenger Train Finance Comm. v. All Persons Interested in the Matter of the Validity of the Authorization and Issuance of General Obligation Bonds to be Issued Pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, No. 34-2013-00140689.

[81] *See* Juliet Williams, *High-speed Rail Officials Say Plan is on Schedule*, SAN DIEGO UNION-TRIBUNE, Dec. 5, 2013, http://www.utsandiego.com/news/2013/dec/05/feds-deny-early-approval-of-ca-rail-segment/all/ ("At a meeting of the board that oversees the California High-Speed Rail Authority, board members voted in closed session to start work on a new request for blanket approval from the courts to sell $8.6 billion in voter-approved bonds, after a Sacramento County judge denied such a request last week."); Jessica Calefati, *Bullet Train: Rail Authority Says It's Full Speed Ahead for Project*, SAN JOSE MERCURY NEWS, Dec. 5, 2013, http://www.mercurynews.com/california-high-speed-rail/ci_24662778/high-speed-rail-authority-try-again-get-bond ("[Dan] Richard [(chairman of the Authority)] on Thursday also announced that the state will repeat its effort to get the judge's approval, and he directed the authority's staff to begin researching what the state must do to be successful this time.").

[82] Pub. L. No. 111-5, 123 Stat. 208, Div. A, Title XII.

[83] *See* Grant/Cooperative Agreement, Federal Railroad Administration, "California High-Speed Rail Authority," No. FR-HSR-009-10-01-05, Attachment 3A at 78-79. (Dec. 5, 2012) [hereinafter ARRA Agreement].

originally granted to other states.[84] These funds are dedicated to design and construction of the initial Central Valley section of the rail line.

Generally, the administration of federal grant programs is governed by the statutes that create the program; regulations, including government-wide guidance issued by the Office of Management and Budget (OMB); and a grant agreement or cooperative agreement[85] signed by the administrating agency and grantee. The funds granted under ARRA are subject to several statutory requirements. First, the grants must conform to the conditions established in section 24405 of Title 49 of the United States Code, which include, in part, Buy America provisions and requirements relating to railroad rights-of-way.[86] FY2010 grant funds must also comply with specific provisions of section 24402 and 24403 of Title 49 of the United States Code.[87] Second, ARRA allows the federal share of the project costs for which a grant is made to be up to 100 percent.[88] FY2010 grant funds allow the federal share of project costs to be up to 80 percent.[89] OMB regulations contained in Part 200 of Title 2 of the Code of Federal Regulations provide general guidance relating to grant administration.[90]Additionally, the Department of Transportation has promulgated regulations creating uniform administrative requirements for grants to local and state governments.[91]

The cooperative agreements signed by the FRA and the Authority contain the most specific grant terms and conditions. The discussion of grant conditions herein is limited to conditions directly governing the grantee's matching fund contribution requirements, the grantor-agency's payment methods, and the grantor-agency's rights relating to violations of the cooperative agreement.

Cooperative Agreements

The FRA and the Authority have signed several cooperative agreements that govern the administration of the grant funds. Cooperative Agreement FR-HSR-0009-10-01-00, and its subsequent five amendments, govern the approximately $2.5 billion in ARRA grant funds. The most recent amendment, Cooperative Agreement FR-HSR-0009-10-01-05 (ARRA cooperative agreement), discussed in detail below, was executed in December 2012. Cooperative Agreement FR-HSR-0118-12-01-00 (FY2010 cooperative agreement) governs the approximately $928 million in FY2010 grant funds.

[84] *See* Pub. L. No. 111-117, 123 Stat. 3056; ARRA Agreement, Attachment 3A at 78-79.

[85] Grant agreements are used when agency participation in a project is limited. Alternatively, cooperative agreements are used when greater federal participation is anticipated. *See* 31 U.S.C. §§ 6304, 6305; High-Speed Intercity Passenger Rail Program, Notice of Funding Availability, 74 Fed. Reg. 29900, 29923 (June 23, 2009).

[86] *See* Pub. L. No. 111-5, 123 Stat. 208.

[87] *See* Pub. L. No. 111-117, 123 Stat. 3057; 49 U.S.C. § 24402(a)(2), (f), (i); 49 U.S.C. § 24403(a), (c). These requirements generally address project management and oversight.

[88] *Id.* ARRA grants are also subject to statutory requirements covering a broad range of topics that are outside the scope of this memorandum, such as grantee procurement, civil rights, environmental protections, and ARRA-specific grant conditions. *See* 74 Fed. Reg. 29923-25.

[89] Pub. L. No. 111-117, 123 Stat. 3057.

[90] *See* 2 C.F.R. Part 200; "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance," 78 Fed. Reg. 78590 (Dec. 26, 2013).

[91] *See* 49 C.F.R. Part 18.

Grantee Matching Funds

The cooperative agreements establish cost-sharing responsibilities between the FRA and the Authority, as grantee, that dictate the maximum percentage of the total project costs that can be funded through federal grant money. For a majority of grant funds authorized under ARRA, approximately $2.4 billion, federal grant funds can account for 49.8182 percent of the project costs, while the Authority must provide for 50.1818 percent of the costs.[92] However, for the $86 million in grant funds redistributed to the Authority in May 2011, federal grant funds can account for 80 percent of the project costs, with the Authority contributing the remaining 20 percent.[93] Under the ARRA cooperative agreement, the Authority's total funding contribution "shall not be less than" approximately $2.5 billion.[94] For the first award of FY2010 grant funds, $715 million issued in December 2010, federal funds can be used to pay for 70 percent of the project costs, while the Authority's share must be at least 30 percent.[95] For the second award of FY2010 grant funds, $213 million issued in May 2011, federal funds can be used for 80 percent of the project costs, while the Authority's share must be at least 20 percent.[96] Under the FY2010 cooperative agreement, the Authority's funding contribution "shall not be less than" approximately $359 million.[97]

The cooperative agreements do not appear to mandate that Authority matching funds be derived from a specific source. The ARRA cooperative agreement notes that the Authority expects to use Prop 1A bond proceeds to fund its portion of the project:

> FRA recognizes that unless otherwise stated herein, the Grantee anticipates using proceeds of Proposition 1A bonds to provide the Grantee's match funding... 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...[98]

This statement clearly anticipates that the Authority will provide its matching funding using Prop 1A bond proceeds, but it does not limit the Authority to this source of funds. Similarly, the FY2010 cooperative agreement mentions both Prop 1A bonds and state appropriated funds in its discussion of grantee funding, without limiting the grantee's contribution to those sources:

> The Grantee has entered into this Agreement with the firm intention of completing all of the tasks described herein, including providing the Grantee contribution of funding assistance for those tasks. The Grantee will seek and diligently pursue any needed appropriations from the California State Legislature and diligently seek to satisfy such other requirements in Proposition 1A in a timely and appropriate manner as necessary to meet the payment obligations and project funding assistance contribution it has agreed to assume under this Agreement.[99]

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[92] ARRA Agreement, Attachment 1, § 5(b)-(c) at 2.

[93] *Id.* at Attachment 1, § 5(d)-(e) at 2.

[94] *Id.* at Attachment 1, § 5(f) at 2.

[95] Grant/Cooperative Agreement, Federal Railroad Administration, "California High-Speed Rail Authority," No. FR-HSR-0118-12-01-00, Attachment 1, § 5(b)-(c) at 2-3 (Nov. 18, 2011) [hereinafter FY2010 Agreement].

[96] *Id.* at Attachment 1, § 5(d)-(e) at 3.

[97] *Id.* at Attachment 1, § 5(f) at 3.

[98] ARRA Agreement, Attachment 1, § 5(j) at 3.

[99] FY2010 Agreement, Attachment 1, § 5(j) at 4.

The cooperative agreements also establish the form of payment that the FRA will make to the Authority for allowable expenses under the grants, which are defined in the agreement.[100] The agreements describe two potential types of payment by the FRA. The first is reimbursement payment by the FRA, where "payment of FRA funding... shall be made on a reimbursable basis, whereby the Grantee will be reimbursed, after submission of proper invoices for actual expenses incurred."[101] This is the only payment method described in the FY2010 cooperative agreement and appears to apply to all funds administered under that agreement.[102] The reimbursement method is described in the ARRA cooperative agreement as the default payment method that applies unless the agreement specifically states that another payment method is available.[103]

A second kind of payment method is included in the ARRA cooperative agreement—advanced payment by the FRA: "FRA may use the advanced payment method to fund requests expenses as permitted by 49 C.F.R. 18.21(c) consistent with the FRA-approved Funding Contribution Plan after receipt and approval of a written justification and request from Grantee."[104] The federal regulation cited requires that advanced payment only be used when grantees and subgrantees "maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee."[105]

The Funding Contribution Plan (Plan), which includes both ARRA and FY2010 funds, is included as an exhibit to the most recent amendment of the ARRA cooperative agreement.[106] The Plan "designates scope activities that are authorized to be paid with Federal funds, using [the] advance payment method, until Prop 1A bond sale or April 2014, whichever is earlier."[107] These activities include "Phase 1 Planning, [Preliminary Engineering,] & Environmental"; real property acquisitions, including right of way acquisitions; and specific activities under "[Design-Build], Program Management, Contract Work, & Contingency."[108] Overall, assuming that the advanced payment method option expires on April 1, 2014 and up until that point only ARRA funds are expended, the Plan appears to anticipate up to approximately $925 million in ARRA funds being spent under the advanced payment method.[109] Under the Plan and the cooperative agreements, it appears that the reimbursement payment method will be in effect after the advanced payment method expires on April 1, 2014 or Prop 1A bonds are sold, whichever is earlier.[110]

The cooperative agreement allows for the advanced payments to be made, consistent with the Plan, even though the lack of concurrent contributory matching funds may cause the Authority to "temporarily exceed" the maximum federal share percentage allowed by the agreement.[111] The agreement states that

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[100] *See* ARRA Agreement, Attachment 2, § 7(b)(4) at 25; FY2010 Agreement, Attachment 1, § 7 at 4.

[101] FY2010 Agreement, Attachment 1, § 7 at 4; ARRA Agreement, Attachment 1, § 7 at 4.

[102] FY2010 Agreement, Attachment 1, § 7 at 4

[103] ARRA Agreement, Attachment 1, § 7 at 4

[104] *Id.*

[105] 49 C.F.R. § 18.21(c).

[106] ARRA Agreement, Exhibit 3, "Funding Contribution Plan," [hereinafter Funding Contribution Plan].

[107] *Id.* at 1. Some of the activities designated as eligible for advanced payment "require FRA approval prior to issuing [notice to proceed] for any design and construction activities..." *Id.*

[108] *Id.*

[109] *Id.* Approximately $462 million of ARRA funds are predicted to be spent in California fiscal years 2013 and 2014, running from July to June. *Id.* at 1-2.

[110] *See* Funding Contribution Plan 1; ARRA Agreement, Attachment 1, § 7 at 4; ARRA Agreement, Attachment 2, § 7(b) at 24-25.

[111] *See* ARRA Agreement, Attachment 3, "Program Estimate/Budget" at 58; *id.* at Attachment 3A, "Project Budget" at 93.

"there is an opportunity for substantial cost saving... if the Grantee is allowed to accelerate the expenditure of ARRA funds."[112] Despite this accelerated spending of federal funds, "the Grantee remains responsible for ensuring that the matching contribution at Project completion" complies with the agreement.[113] Therefore, after the expiration of the advanced payment method, the Plan envisions that the Authority will provide "catch-up" Prop 1A matching funds, since the federal funds expended under the advanced payment method will have exceeded the maximum federal cost-sharing percentage.[114] Once the Authority's matching funds have caught up to the required grantee cost-sharing percentage of the total expenditures, estimated to occur in April 2015, the Plan envisions the use of mixed matching funds, ARRA funds, and FY2010 funds.[115]

Violations of the Cooperative Agreement

Based on the provisions of the cooperative agreements regarding the Authority's matching funds, it appears as though the Authority must begin providing its grantee matching funds in April 2014, when it is scheduled to expend approximately $63 million of Prop 1A funds.[116] Therefore, it does not appear that the Authority's failure to obtain bond proceeds or secure other matching funding has led to a violation of the cooperative agreements at this time.

The cooperative agreements establish the FRA's rights when a violation or anticipated violation of the agreement occurs, giving it several options to address such an event. The FRA may choose to take advantage of these terms if the Authority violates an agreement in the future. The FRA may "suspend or terminate all or part" of the grant funding provided for in the ARRA and/or FY2010 cooperative agreements if one of the following events occurs: (1) the Authority violates the terms of the Agreement; (2) the FRA determines that the purpose of the statute authorizing the grant program is not "adequately served" by continuing the grant assistance; or (3) there is a "failure to make reasonable progress on the Project."[117] Additionally, the ARRA cooperative agreement specifically states that the FRA may terminate or suspend financial assistance if it determines that the Authority "may be unable to meet the contributory match percentage" and "complete the Project according to the Project Schedules" in the agreement.[118] Based on the text of the cooperative agreements, the decision to terminate or suspend grant funding is left to the discretion of the FRA.[119]

Under certain circumstances, the "FRA reserves the right to require the Grantee to repay the entire amount of FRA funds provided under this [cooperative] Agreement or any lesser amount as may be determined by FRA."[120] Under the ARRA cooperative agreement, the FRA may take advantage of this

[112] *See* ARRA Agreement, Attachment 3, "Program Estimate/Budget" at 58; *id.* at Attachment 3A, "Project Budget" at 93.

[113] *See* ARRA Agreement, Attachment 3, "Program Estimate/Budget" at 58; *id.* at Attachment 3A, "Project Budget" at 93.

[114] *See* Funding Contribution Plan 2.

[115] *See id.* It appears as though the Funding Contribution Plan does not envision expenditure of the FY2010 grant funds until 2017. *See id.* at 5.

[116] *Id.* at 3. The Funding Contribution Plan also estimates that approximately $179 million of Prop 1A funds will be expended between April 1, 2014 and June 30, 2014. *Id.* at 1-2.

[117] ARRA Agreement, Attachment 2, § 23(a) at 37; FY2010 Agreement, Attachment 2, § 23(a) at 26-27.

[118] ARRA Agreement, Attachment 2, § 23(a) at 37.

[119] *See id.*; FY2010 Agreement, Attachment 2, § 23(a) at 26-27. The grantee may be entitled to a hearing if an enforcement action is taken against it. *See* 49 C.F.R. § 18.43(b) ("the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.").

[120] ARRA Agreement, Attachment 2, § 23(b) at 37. *See* FY2010 Agreement, Attachment 2, § 23(b) at 27.

repayment of funds if the Authority "fails to adhere to the Funding Contribution Plan or [the] FRA determines the [Authority] will be unable to meet the contributory match percentage" in the agreement.[121] Furthermore, if the FRA chooses to require repayment, it "may collect on such a claim by means of administrative offset against funds payable by the United States to, or held by the United States for, the State of California."[122] Under the FY2010 cooperative agreement, the FRA may require repayment if it determines that the grantee "willfully misused Federal assistance funds" by taking specific actions.[123] This agreement does not specifically address the method of repayment.[124]

The ARRA cooperative agreement includes additional FRA rights. If the Authority "fails to secure and deliver its required match funding contribution pursuant to the Funding Contribution Plan," the FRA has the option of requesting a "statement of resolution."[125] The Authority would then be required to "provide a written description of the facts and circumstances leading to its failure and a detailed proposal and timeline for resolving those issues."[126] The FRA chooses whether or not to accept the proposal, with modifications possible. If the proposal is accepted, the grantee is given "time to resolve the issues in accordance with the proposal."[127] A grantee's failure to provide required matching funds or failure to adhere to other terms of the cooperative agreement may lead to the grantee's suspension or debarment from further participation in Department of Transportation-administered surface transportation grant programs.[128] Similarly, such failures "may adversely affect any future decisions regarding any future requests for funding under any grant program administered by the FRA or the U.S. [Department of Transportation]."[129]

In recognition of the FRA's various rights to amend, suspend, or terminate the cooperative agreement if the Authority does not provide matching funds, the agreement also requires the Authority to provide written notice to the FRA when any circumstance arises that might prevent the Authority from delivering required matching funds.[130]

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[121] ARRA Agreement, Attachment 2, § 23(b) at 37.

[122] ARRA Agreement, Attachment 2, § 23(c) at 37. These funds include both FRA funds payable to California and other DOT funds payable to California. *Id.*

[123] FY2010 Agreement, Attachment 2, §23(b) at 27.

[124] *See id.*

[125] ARRA Agreement, Attachment 2, § 23(g) at 38. The statement of resolution is also available when a grantee "fails to make reasonable use of the Project property, facilities or equipment"; or fails to adhere to the terms of the cooperative agreement. *Id.*

[126] *Id.*

[127] *Id.*

[128] ARRA Agreement, Attachment 2, § 23(d) at 38.

[129] ARRA Agreement, Attachment 2, § 23(f) at 38.

[130] *See* ARRA Agreement, Attachment 2, § 2(d) at 21.

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MEMORANDUM March 5, 2014

To: Subcommittee on Railroads, Pipelines, and Hazardous Materials of the House Committee on Transportation and Infrastructure
Attention: Ranking Member Corrine Brown

From: Alissa Dolan, Legislative Attorney, 7-8433

Subject: **Questions for the Record for "A Review of the Challenges Facing California High Speed Rail"**

This memorandum responds to your request for answers to Questions for the Record following the January 15, 2014 hearing entitled "A Review of the Challenges Facing California High Speed Rail" of the Subcommittee on Railroads, Pipeline, and Hazardous Materials of the House Committee on Transportation and Infrastructure.

In your testimony, you discuss the cooperative agreements and mention that while Prop 1A bond funds may be what was anticipated, the agreements do not limit the Authority to using these funds. Does this mean that California can use other funds, such as the cap and trade funding, to pay its near-term obligations?

The cooperative agreements[1] that define the administration of federal grant funds to the California High Speed Rail Authority (Authority) from the Federal Railroad Administration (FRA) do not appear to require that the Authority's matching funds come from Proposition 1A bond proceeds. The cooperative agreement for the American Reconstruction and Recovery Act[2] (ARRA) states:

> FRA recognizes that unless otherwise stated herein, the Grantee anticipates using proceeds of Proposition 1A bonds to provide the Grantee's match funding... 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...[3]

[1] Grant/Cooperative Agreement, Federal Railroad Administration, "California High-Speed Rail Authority," No. FR-HSR-009-10-01-05 (Dec. 5, 2012) [hereinafter ARRA Agreement]; Grant/Cooperative Agreement, Federal Railroad Administration, "California High-Speed Rail Authority," No. FR-HSR-0118-12-01-00 (Nov. 18, 2011) [hereinafter FY2010 Agreement].

[2] Pub. L. No. 111-5.

[3] ARRA Agreement, Attachment 1, § 5(j) at 3.

This provision clearly states that the Authority anticipated using Proposition 1A bond proceeds to satisfy its matching funds requirement, but it does not limit the Authority to this source of funds. The cooperative agreement for the funds from the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act for 2010[4] (FY2010 grant funds) also mentions both Proposition 1A bond proceeds and state appropriated funds. It states:

> FRA recognizes that, except to the extent preempted by Federal law, the payment obligations and Project funding assistance contribution of the Grantee under this Agreement (including those to FRA directly) are subject to the availability of appropriations by the California State Legislature, and in the case of Proposition 1A bond funds, certain other legal requirements set forth therein that must be satisfied prior to Proposition 1A bond funding for certain purposes... The Grantee has entered into this Agreement with the firm intention of completing all of the tasks described herein, including providing the Grantee contribution of funding assistance for those tasks. The Grantee will seek and diligently pursue any needed appropriations from the California State Legislature and diligently seek to satisfy such other requirements in Proposition 1A in a timely and appropriate manner as necessary to meet the payment obligations and project funding assistance contribution it has agreed to assume under this Agreement.[5]

Under these agreements, it appears as though the Authority could use non-Proposition 1A bond proceeds to comply with the matching funds requirement. However, it is important to note that the Authority's ability to use other potential funding sources for this purpose, perhaps including cap and trade funds, may be constrained by state laws and regulations that govern those funding streams.[6]

Did the Court invalidate the California Legislature's appropriation?

No. The Superior Court for the County of Sacramento addressed this issue in its August 2013 opinion in *Tos v. California High Speed Rail Authority*.[7] The court concluded that "the writ [of mandate] should not issue in this case to invalidate the legislative appropriation made through SB 1029. The Court reaches this conclusion on substantive and procedural grounds."[8]

First, on substantive grounds, the court determined that nothing in Proposition 1A tied the Legislature's decision to appropriate funds for high-speed rail to the Authority's compliance with the Proposition 1A funding plan provisions. In other words, the Authority's failure to comply with Section 2704.08(c)(2) requirements about the contents of the initial funding plan had no effect on the Legislature's ability to appropriate funds.[9] Therefore, "Proposition 1A appears to entrust the question of whether to make an appropriation based on the funding plan to the Legislature's collective judgment. The terms of Proposition 1A itself give the Court no authority to interfere with that exercise of judgment."[10]

Second, on procedural grounds, the petitioner did not request that the court invalidate the legislative appropriation in its Second Amended Petition and Complaint. Rather, the petitioners raised this issue for

[4] Consolidated Appropriations Act, 2010, Pub. L. No. 111-117.

[5] FY2010 Agreement, Attachment 1, § 5(j) at 3-4.

[6] Potential limitations contained in state laws and regulations are outside the scope of this memorandum.

[7] Tos, et. al. v. Cal. High-Speed Rail Auth., No. 34-2011-00113919, slip op. at 13. (Aug. 16, 2013) [hereinafter *Tos I*].

[8] *Id.*

[9] *Id.*

[10] *Id.*

the first time in their reply brief. The court noted that "[a]s a general rule, arguments raised for the first time in a reply brief will not be considered."[11]

Did either legal decision rescind any construction contracts that the Authority has already entered into?

No. The Superior Court for the County of Sacramento addressed this issue in its November 2013 opinion in *Tos v. California High Speed Rail Authority*, which determined whether the issuance of a writ of mandate invalidating the funding plan would be a remedy with any real and practical effect.[12] After first concluding that such a writ of mandate would have a real and practical effect[13] because the approval of the first funding plan is a necessary prerequisite to the approval of a second funding plan that allows bond funds to be expended, the court turned to the issue of existing construction contracts.

In its August decision, the court asked the parties to write briefs discussing whether the writ of mandate should invalidate "any subsequent approvals made by the Authority in reliance on the November 3, 2011 funding plan."[14] The court then tried to determine if those subsequent approvals would require spending bond proceeds in excess of the amount permitted to be spent[15] before the approval of the two funding plans required under Proposition 1A.[16] The plaintiffs identified two construction contracts signed by the Authority with CalTrans and Tutor-Perini-Parsons. They argued that the contracts necessarily involved the present commitment of Proposition 1A bond proceeds for construction-related activities and, therefore, should be invalidated by the writ of mandate. The court rejected this argument for several reasons. First, it found that the contracts had termination clauses and, thus, the Authority was not "necessarily committed to spending the full face amount of those contracts."[17] Second, the court noted that these construction contracts were being funded by federal grant money under a cooperative agreement with the FRA.[18]

While the agreement requires the Authority to provide matching funds, the court ruled that the plaintiffs did not demonstrate that those matching funds would necessarily come from Proposition 1A bond proceeds, as opposed to another state funding source.[19] Therefore, the approval of the construction contracts did not necessarily require the expenditure of Proposition 1A bond funds in contravention of the Proposition 1A funding plan provisions.

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[11] *Id.*

[12] Tos, et. al. v. Cal. High-Speed Rail Authority, No. 34-2011-00113919, slip op. at 1 (Nov. 25, 2013) [hereinafter *Tos II*]. This issue is not addressed in the suit regarding validation of bonds. *See generally* High-Speed Rail Auth. and High-Speed Passenger Train Finance Comm. v. All Persons Interested in the Matter of the Validity of the Authorization and Issuance of General Obligation Bonds to be Issued Pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, No. 34-2013-00140689, slip op. (Nov. 25, 2013).

[13] *Tos II*, slip op. at 2-3.

[14] *Id.* at 3.

[15] Proposition 1A allows "the expenditure of proceeds of bonds... up to an amount equal to 7.5 percent of the aggregate principal amount of bonds..." for specific purposes. *See* CAL. STS. & HIGH. CODE § 2704.08(g).

[16] Proposition 1A requires two funding plans to be approved before "committing any proceeds of bonds." *See* CAL. STS. & HIGH. CODE § 2704.08(c), (d).

[17] *Tos II*, slip op. at 4.

[18] *See generally* ARRA Agreement.

[19] *Tos II*, slip op. at 4 ("Similarly, plaintiffs did not demonstrate convincingly that federal grant money that has been spent so far and that currently is projected to be spent necessarily exceeds the amount of funds available to the Authority from funds other than Proposition 1A bond proceeds, and therefore inevitably must be matched with Proposition 1A bond proceeds.").

Does the court's writ of mandate have a direct effect on the Grant Agreement or the Authority's ability to use federal funds?

It appears as though the issuance of the writ of mandate in the court's November opinion in *Tos* has no *direct* effect at this time on the cooperative agreements between the Authority and FRA or the Authority's ability to expend federal funds pursuant to those agreements. The court ruled that a "temporary restraining order or injunction prohibiting the Authority from using federal grant money while [the *Tos*] action is pending" would not be "appropriate at this point in the proceedings."[20] The court concluded that:

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

Alternatively, the issuance of the writ of mandate could have an *indirect* impact on the Authority's ability to comply with the terms of the cooperative agreements. Before the Authority may expend Proposition 1A bond proceeds as matching funds, it will have to issue a new funding plan that complies with Proposition 1A, as determined by the court.[21] This new requirement could delay the earliest time at which bond proceeds are available to be expended. Since the agreements require the Authority to provide matching funds during a specific time period,[22] a delay in bond-proceed availability could affect the Authority's ability to comply with its matching funds obligation. However, the Authority can still employ other funding sources as matching funds since it is not required to use Proposition 1A bond proceeds to fulfill the matching funds obligation, as discussed above.

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[20] *Id.*

[21] *See id.* at 2-6.

[22] At the time of the hearing on January 15, 2014, the ARRA Agreement required the Authority to begin spending state matching funds by April 1, 2014. *See* ARRA Agreement, Exhibit 3, "Funding Contribution Plan," at 1. However, it appears that this timetable may have been revised in February 2014. *See* Letter from Jeff Morales, California High Speed Rail Authority, to Mariam Ouhamou, Federal Railroad Administration, on FR-HSR-0009-10-01-05, Funding Contribution Plan, Exhibit 3, Feb. 20, 2014, *available at* http://www.hsr.ca.gov/docs/about/funding_finance/funding_agreements/FR-HSR-0009-10-01-005_FCP.pdf. According to publicly available reports, under a revised timetable the Authority would begin spending state matching funds by July 1, 2014. *See* Ralph Vartabedian, *Federal authorities give bullet train agency more time to raise cash*, L.A. TIMES, Feb. 21, 2014, *available at* http://www.latimes.com/local/lanow/la-me-ln-bullet-train-extension 20140221,0,142691.story#axzz2uAFaiP3K.

September 10, 2013

Good morning. My name is Shelli Andranigian. I am the granddaughter of Armenian immigrants who came to America to escape persecution at the hands of the Turks. The Turkish people pillaged Armenia because of religion and the rich land in the region. Both of my parent's families lost relatives and property there. Their folks moved to Fresno County because the land and climate reminded them of the old country. The Central Valley (once home to such notable Armenians as Cherilyn Sarkisian and Jerry Tarkanian along with the late William Saroyan and Varaz Samuelian) became their new homeland.

In the early 1930's, my maternal grandfather was taken out of his modest home in the Easton District (which is in Fresno County) in the middle of the night and forced to sign an agreement for his raisins (vineyard). The local company's logo is of a bonneted brunette.

Flash forward to 2013 and the immigrant family from Cambodia who is being strong-armed to sell their small business in Fresno County at half the assessed value to make way for a high-speed train in California. A train that is already in violation of Proposition 1A as ruled by Sacramento County Superior Court Judge Michel P. Kenny several weeks ago.

There are other small businesses, along with churches, communities, dairies, farms, homes and schools in the Central Valley that remain in the proposed paths including individuals who have made California their new homeland over the years now being adversely affected.

We are a nation of immigrants and the grandchildren still feel the strong ties. They want to continue their businesses and livelihoods for future generations.

My paternal grandmother who did not speak English had to deal with a number of situations as a female business owner who was also a young widow raising a farm family during the Depression Era. I personally know of a small business owner right now in Fresno County who has been targeted by the Authority because she is not male.

I kindly ask each of you as Authority board members (Chairman and CEO included) and everyone else affiliated with the California High-Speed Rail project to start treating all in the proposed pathways with respect. Please stop taking advantage of everyone and especially those whose first language is not English. It may have worked nearly 100 years ago, but this is the 21st century. Bullying, lying to and trying to cheat those in the proposed paths of the California High-Speed Rail to make the largest **flawed** infrastructure project in the world happen at any cost confirms the desperation of those at every level who are involved. It's time to wipe the slate clean. You'll earn the respect of everyone, including yourself. And for the record, I love trains.

Thank you.

Shelli Andranigian
On behalf of the Andranigian Family
AndranigianMedia@aol.com

cc: Fresno County Board of Supervisors, Fresno County Farm Bureau, Kings County Board of Supervisors, Kings County Farm Bureau

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