



**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 CHSRA'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:

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.

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.

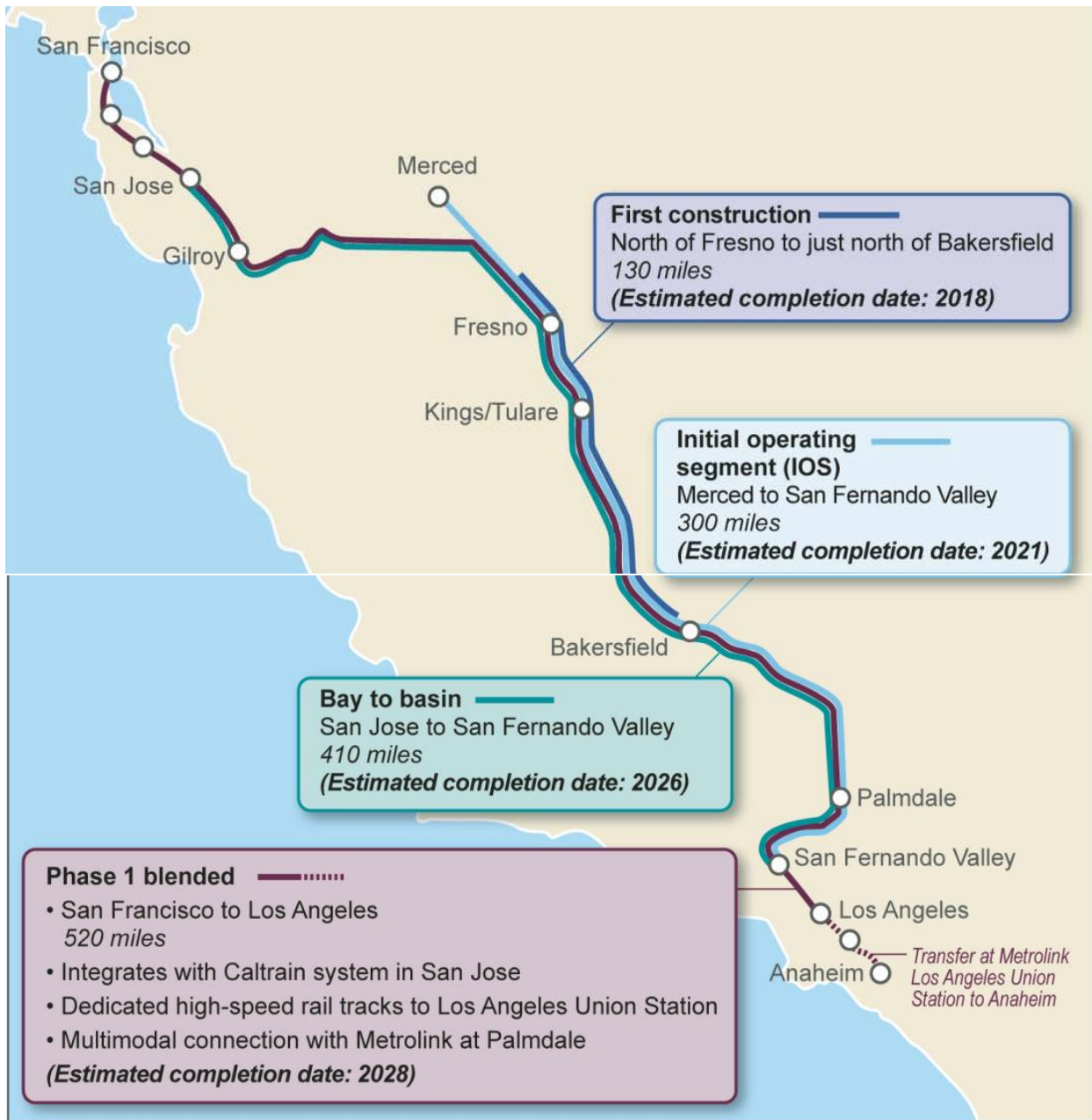
¹⁹ Letter from Roy Kienitz, Under Secretary for Policy, U.S. DOT, to Roelof van Ark, Chief Executive Officer, CHSRA (May 25, 2011).

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.