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May 20, 2013

VIA E-MAIL & U.S. MAIL

David Navecky
Office of Environmental Analysis
SURFACE TRANSPORTATION BOARD
395 E Street, SW
Washington, DC 20423-0001

Re: **STB Finance Docket No. 35724**, California High Speed Rail Authority
Petition for Exemption filed March 27, 2013
Comments of Kings County Water District, Riverdale Public Utility District
and Citizens for California High-Speed Rail Accountability

Dear Mr. Navecky:

This office represents Kings County Water District, Riverdale Public Utility District and Citizens for California High-Speed Rail Accountability who have submitted their protests in opposition to the above project. These parties submit the following comments on the Office of Environmental Analysis recommendation that the Board adopt a Final Environmental Impact Statement (Final EIS) issued by the Federal Railroad Administration (FRA) and California High-Speed Rail Authority (Authority). This Final EIS is titled "California High-Speed Train: Merced to Fresno Section, Final Project Environmental Impact Report/Environmental Impact Statement."

I. THE OEA ACTED TOO HASTILY AND SHOULD CONDUCT ITS OWN THOROUGH REVIEW LIKE IT DID IN DESERTXPRESS.

The Petition for Exemption was filed March 27, 2013. The OEA's recommendation to the Board adopt the Final EIS was made on April 9, 2013 – 13 days later. It appears that the OEA made a rush to judgment in this matter.

The haste with which this decision was made contrasts with the thorough environmental review in DesertXpress.¹ In that case, the Board's Decision stated that it had:

participated in a thorough environmental review of the DXE project, which took a "hard look" at environmental impacts, selected a preferred alternative, and recommended extensive environmental mitigation conditions to avoid or minimize that alternative's potential environmental impacts. (p.1)

[...]

There has been a thorough NEPA review in this case. In July 2006, FRA began work on the environmental review for the proposed Line, publishing a notice of intent to prepare an Environmental Impact Statement (EIS) examining the anticipated environmental effects of constructing and operating the proposed Line. The Board through its Office of Environmental Analysis (OEA) participated throughout the environmental review as a cooperating agency, along with the Bureau of Land Management (BLM), the Federal Highway Administration (FHWA), and the National Park Service. See 40 C.F.R. § 1501.6. In its role as a cooperating agency, the Board provided its expertise in rail transportation and independently assessed the environmental analysis to ensure that the Board met its NEPA responsibilities. FRA, with the assistance of the cooperating agencies, issued a Draft EIS in March 2009, a Supplemental Draft EIS in August 2010, and a Final EIS in October 2010. The Board provided feedback and comments through OEA on all phases of the EIS preparation, including responding to public and agency comments on the Draft EIS and Supplemental Draft EIS. OEA also participated in public meetings that were held in Las Vegas, Barstow, and Victorville in July 2006 and April 2009, and in meetings with interested Native American Tribes and staff from BLM's California field office. FRA published its Record of Decision (ROD) on July 8, 2011. In the ROD, FRA approved the environmentally preferred alternative for the route, facilities, and technology (Selected Alternative), subject to 146 mitigation measures to avoid or minimize potential adverse environmental impacts. (Pp. 4-5)

[...]

¹DesertXpress Enterprises, LLC and Desertxpress HSR Corporation—Construction and Operation Exemption—in Victorville, Cal. And Las Vegas, Nev., FD 35544 Decision dated October 20, 2011 (service date October 25, 2011).

On September 22, 2011, after the ROD was issued, OEA prepared and issued a memorandum making final environmental recommendations for this proceeding, which is available on the Board's website. OEA's memorandum summarizes the environmental review process and key environmental issues associated with the proposed Line. OEA recommends that, if DXE's petition is granted, the Board should adopt FRA's EIS for purposes of complying with NEPA and the Board's environmental rules, and should approve construction and operation of the Selected Alternative, subject to the environmental mitigation measures set forth in FRA's ROD.

After reviewing the entire environmental record, we are satisfied that the EIS prepared by FRA, with our participation along with other cooperating agencies, has taken the requisite "hard look" at the potential environmental impacts associated with the proposed Line as required by NEPA. (p. 7)

The Board concluded by stating (p. 7): As explained in the ROD, FRA's Selected Alternative is the alternative that best satisfies the purpose and need for the proposed Line and minimizes impacts to the environment by utilizing an existing transportation corridor where practicable.

In DesertXpress no replies to the petition for exemption were received. Here, numerous parties have appeared and opposed the petition.

In DesertXpress, the environmental review occurred over a period of over five years, from July 2006 when FRA published its notice of intent to prepare and EIS, to October 2011 when the Board issued its decision approving the petition. Here, the EIS/EIR was prepared principally by the Petitioner itself. This is a red flag calling for oversight.

In DesertXpress, on September 22, 2011, after the ROD was issued, OEA prepared and issued a memorandum making final environmental recommendations for this proceeding. Here, it appears no such analysis was performed.

In DesertXpress, the OEA participated throughout the environmental review as a cooperating agency. Here, OEA had no participation but reached its decision only 13 days after the petition was filed.

The differences between this case and DesertXpress show that the OEA has acted too hastily to make the determination it did.

II. THE SETTLEMENT OF THE CHOWCHILLA HIGHLIGHTS THE REMOVAL OF THE CHOWCHILLA WYE FROM THE MERCED-FRESNO EIS.

After certification of the Merced to Fresno EIS/EIR, the City of Chowchilla filed suit under the California Environmental Quality Act, City of Chowchilla v. California High-Speed Rail Authority et al., Sacramento County Superior Court Case no. 34-2012-80001166.

On January 23, 2013, the parties entered into a Settlement Agreement. See enclosed. The Settlement Agreement provides that the Authority agreed to certain restrictions for the alignment of the Chowchilla Wye. See ¶¶ 4, 6.

The Authority had removed the Chowchilla Wye from the Merced-Fresno EIS/EIR on May 2, 2012 when it approved the Statement of Overriding Considerations for the project. See Agreement Exhibit A.

The Authority seeks an exemption for the entire 65 mile segment from Merced to Fresno even though it is only going to build about 29 miles.

With the Chowchilla Way now removed from the Merced-Fresno EIS/EIR, and awaiting environmental review in the San Jose to Merced EIS/EIR, there is in effect no final environmental review document for continuous rail for the Merced-Fresno "Section" of the high-speed rail project.

The gap in the environmental review of the Merced-Fresno Section means that the OEA should independently review the status of that review for its propriety and compliance with NEPA.

III. CONTRARY TO CLAIMS OF THE AUTHORITY AND OTHERS, NO GREAT URGENCY EXISTS TO COMPEL HASTE IN DECISION-MAKING BY THE BOARD OR OEA.

The Authority and California's Senators claim construction is set begin in "mid-July." These statements are intended to induce the Board to act precipitously, giving those inclined to question, criticize or oppose the project absolute minimum time to do so.

The urgency claimed for this matter does not exist. A final design-build contract has not been awarded. Design level is at 30%, at most. Construction cannot begin until final design is complete.

The Authority can expend no funds until it complies with the requirement of Attachment 1A of Addendum No. 5 to FRA Grant/Cooperative Agreement No. FR-HSR-0009-10-02-05 which

precludes expenditure of any funds until agreements are entered into between the Authority and the railroads impacted by the project: “ The Grantee may not obligate or expend any funds (federal, state or private) for final design and/or construction of the Project, or commence any part of the final design and/or construction for the Project, or any component of the Project, without receiving FRA’s prior written approval of the executed railroad agreement satisfying the requirements of this section.”

The UPRR Response filed in the validation action² in state court demonstrates no such agreement exists with UPRR. See enclosed Response at ¶¶ 7-8. The BNSF April 16, 2013 letter to Joseph Metzler shows that discussion between the parties at a standstill. See enclosed April 16, 2013 letter. As far as is known, no agreements exist with San Joaquin Valley Railroad or other railroads impacted by the project.

It also appears no property has been acquired in the first construction segment from Avenue 7 north of the San Joaquin River to Ashlan Ave. in Fresno. The AECOM Transportation CH2M Hill Progress Report 72.3 April 2013 (enclosed) states that boundary surveys are not complete, appraisal maps are not complete, title reports are not complete, and that

Updates of estimated property values in the appraisals submitted prior to January 2013 have been requested by the Authority. Revisions of appraisals have been given a high priority. This required a review of all deliverables and established a new priority list. (p. 2)

Engineering refinements will continue to impact ROW schedule. Without final improvement design details (horizontal and vertical), the ability to perform ROW appraisal becomes challenging. (p. 2) (emphasis added)

The Update also states (p. 9):

Review appraisal reports to ensure appraisal basis matches appraisal map and legal description. Main concern is consistency between the three key documents (appraisal report, appraisal map, and legals) due to recent design changes. This created unanticipated out of scope work. (Emphasis added)

The report relates only to right of way parcels. Under the term sheet approved by the Board at the March 1, 2012, the contractor is required to obtain temporary construction easements not

²High-Speed Rail Authority, et al. v. All Persons, etc., Case No. 2013-00140689, filed March 19, 2013. This case is a “validation” action filed to “confirm” the validity of issuing the State Proposition 1A bonds.

David Navecky
Office of Environmental Analysis
SURFACE TRANSPORTATION BOARD
May 20, 2013
Page 6

acquired by the Authority: "Contractor is responsible for acquiring, at its cost, any temporary construction interests not requested in its Proposal." (p. 6) The contract has not been awarded and temporary construction easements have not been obtained.

The California State Public Works Board³ has to approve all appraisals prior to the making of pre-condemnation offers required under California law. See California Government Code § 7267.2(a). Our information based on the Board's agendas, is that there have been no such approvals. Thus, there appears to be a great deal of work left before property is acquired.

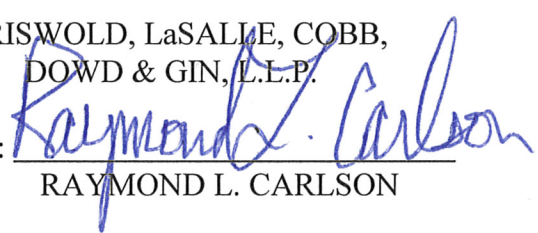
Thus there is no great urgency and the commenters request that the OEA re-visit its prior determination to allow sufficient time for meaningful public participation, openness, and transparency of process, rather than decisions being made on the basis of the minimum or only slightly extended time frames.

The Authority could have filed its petition at any time after filing its FRA ARRA application in October 2009. It chose to sandbag the public by making no such filing until after Representative Denham wrote to the Board on March 22, 2013, pointing out that the Authority was acting to proceed with construction without have made any filing with the STB.

Very truly yours,

GRISWOLD, LaSALLE, COBB,
DOWD & GIN, L.L.P.

By:


RAYMOND L. CARLSON

³Under the Property Acquisition Law, the State Public Works Board (SPWB) is the state agency responsible for acquiring property for state agencies. See California Government Code §§ 15770 (creating the SPWB), 15850-15866, esp. 15853(a); also California Code of Civil Procedure § 1245.210(b).

Cota Cole LLP

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REPLY TO:
☐ ROSEVILLE
☒ MADERA
☐ ONTARIO

January 24, 2013

VIA EMAIL AND U.S. MAIL

Thomas Fellenz
Chief Legal Counsel
California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Re: City of Chowchilla Settlement Agreement (Sacramento Superior Court Case No. 34-2012-80001166)

Dear Mr. Fellenz:

Thank you for working with the City to negotiate the settlement agreement in Sacramento Superior Court case number 34-2012-80001166. Please accept this letter as confirmation of the City's position with respect to section 5.1 of the Agreement. As you and I have discussed, the City understands the \$300,000.00 amount referenced in the "Legal Fees and Other Costs" section to mean that the City will submit to the High Speed Rail Authority documentation to justify the amount claimed in fees and costs. And that the High Speed Rail Authority will reimburse the City an amount of up to \$300,000.00 to pay the City for actual legal fees and costs expended in the pursuit of this litigation.

I again thank you for your professionalism throughout this process. Please feel free to contact me should you have any question or comment.

Sincerely,



Thomas E. Ebersole
COTA COLE LLP

TEE/maj

{TEE/00023426. }

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of January 23, 2013 ("Effective Date") by and between Plaintiff/Petitioner CITY OF CHOWCHILLA (the "City") and Defendant/Respondent CALIFORNIA HIGH SPEED RAIL AUTHORITY ("HSRA"). The City and HSRA are collectively referred to as the "Parties" and sometimes individually referred to as a "Party."

This Agreement memorializes the understanding of the Parties and is entered into by the Parties to fully resolve the following pending matter: *City of Chowchilla v. California High Speed Rail Authority* (Sacramento County Superior Court Case No. 34-2012-80001166) (filed June 1, 2012) (the "Chowchilla Lawsuit").

RECITALS

A. On May 3, 2012, HSRA, through its Board of Directors and by means of a series of resolutions, certified pursuant to the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) ("CEQA") the Final Environmental Impact Report ("FEIR") and approved a proposed project known as the Merced to Fresno Section of the High Speed Train System (the "Approved MF Project"). The approval resolution did not include approval of high-speed train elements contained within the area ("Wye Area") depicted in the rectangular box shown in Figure 2 (attached hereto as Attachment A) of Exhibit A to approval Resolution 12-20, which area includes all of the City limits, but rather specified that high-speed train elements in this area shall be carried forward for further study and analysis in a further CEQA document such as but not limited to the pending San Jose to Merced EIR.

B. The first portion of the statewide system HSRA intends to construct is located generally between the Avenue 17/Burlington Northern Santa Fe railroad track intersection east of Madera and Kern County near Bakersfield ("Initial Construction Segment" or "ICS").

C. On May 3, 2012, the HSRA filed a Notice of Determination with the State Clearinghouse in the Governor's Office of Planning and Research.

D. On June 1, 2012, the City filed the Chowchilla Lawsuit, which consists of a Petition for Writ of Mandate and Complaint ("Petition") challenging HSRA's approval of the Approved MF Project under CEQA and alleging violations of the Bagley-Keene Open Meeting Act (California Government Code Section 11120, *et seq.*). The City requested under Public Resources Code Section 21167.6(a) that HSRA prepare the administrative record ("Record").

E. On June 1 and June 4, 2012, respectively, two other cases were filed in Sacramento Superior Court against the FEIR and Approved MF Project containing most of the same allegations and legal theories as the Chowchilla Lawsuit – case numbers 34-2012-80001165 and 34-2012-80001168 (“Related Lawsuits”).

F. By judicial order, the Chowchilla Lawsuit and the Related Lawsuits are consolidated in Department 29 for case management (including administrative record matters), briefing and trial purposes only. A hearing on the merits in the Chowchilla Lawsuit and Related Lawsuits is scheduled for April 19, 2013.

G. In 2012, HSRA completed and certified the Record and lodged it with Department 29. The Record is the same for the Chowchilla Lawsuit and the Related Lawsuits.

H. The Parties to this Agreement believe that their mutual interests will be best served if the Chowchilla Lawsuit is dismissed, per the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and any other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 Recitals and Definitions Incorporated. Each recital and definition set forth above is incorporated herein by reference and is made part of this Agreement.

2. No Admissions. All Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission of wrongdoing by any Party or of any inadequacy or impropriety in connection with HSRA’s approval of the Approved MF Project.

3. Dismissal of Petition with Prejudice. Within ten (10) days after this Agreement is fully executed by all Parties, the City shall execute and file and serve a dismissal of the Chowchilla Lawsuit in its entirety with prejudice (the “Dismissal”). The Dismissal shall be in the exact form (except the addition of a signature by someone representing the City with requisite authority) as the Dismissal form attached hereto and incorporated herein as Attachment B, which form is acceptable to the Parties. HSRA agrees to waive any affirmative defenses based on the fact of the City’s dismissal of the Chowchilla Lawsuit in any future lawsuit filed by the City against any future CEQA document on the Wye Area related to its decision to remove the Wye Area from the Approved MF Project approved on May 3, 2012 via HSRA Resolution 12-20, as described in the FEIR certified by the HSRA Board in Resolution 12-19. The City reserves its rights as described in paragraph 6 below.

4. HSRA's Obligations Regarding Wye Area.

4.1. HSRA acknowledges that the City is concerned that high-speed rail elements within the Wye Area, once approved and constructed by HSRA and as operational, would be unacceptable to the City if the elements include an alignment along Avenue 24, such as that depicted in Attachment A. HSRA acknowledges that such an Avenue 24 alignment would traverse a large area recently approved by LAFCO for annexation and that it could have a negative economic impact on the City if it were chosen as the preferred high-speed rail alignment because of the City's plan for a large multi-use commercial, entertainment and industrial development in the annexation area, which could be negatively impeded by an Avenue 24 alignment. HSRA acknowledges that this development is very important to the City. HSRA will consider these factors when it determines whether an Avenue 24 alignment is feasible under CEQA.

4.2 HSRA acknowledges that the City is concerned that high-speed rail elements within the Wye Area, once approved and constructed by HSRA and as operational, would be unacceptable to the City if the elements include an alignment along the Union Pacific/State Route 99 corridor within the City, such as that depicted in Attachment A. HSRA acknowledges that the Union Pacific railroad tracks and State Route 99 already transect a near-center area of the City's limits, which impedes connectivity and cohesiveness. HSRA further acknowledges that its preliminary estimate of the cost of constructing high-speed rail infrastructure along a Union Pacific railroad/State Route 99 ("UPRR/SR99") alignment is almost half a billion dollars (\$.47 billion) more than the next most expensive non-UPRR/SR99 alignment within the Wye Area that HSRA currently is evaluating. HSRA will consider these factors when it determines whether a UPRR/SR99 alignment is feasible under CEQA. The attached map (at Attachment C) shows the Wye Area routes being recommended by HSRA staff to be carried forward for environmental evaluation. If the UPRR/SR99 alignment is selected and approved as the preferred alternative route, the HSRA will consult and work with the City in good faith to address the City's above issues and carry forth appropriate means to ameliorate those issues.

4.3 HSRA agrees to consider in good faith the City's concerns and potential issues set forth in subsections 4.1 and 4.2 above, as the City has expressed in more detail in various communications to HSRA and as the City may further express as HSRA's development of alternatives in the Wye Area evolves, as alternatives may be eliminated from further consideration, and in ultimately selecting an alignment within the Wye Area. HSRA will not select an alignment in the Wye area solely based upon the May 3, 2012 Final Environmental Impact Report ("FEIR") approved by the HSRA Board as Resolution 12-19.

4.4 HSRA will work with the City to draft and execute appropriate cooperative agreements to address issues such as, but not limited to, utility relocations, relocation assistance and the like.

5. Legal Fees and Other Costs.

5.1 HSRA agrees to pay the City \$ 300,000 related to the City's attorney fees and costs incurred in connection with filing and pursuing the Chowchilla Lawsuit. HSRA will make the payment after HSRA finalizes and certifies the CEQA document on the Wye Area and approves a Wye alignment and the statute of limitations for a CEQA lawsuit challenging that CEQA document has run. HSRA will not make the payment if HSRA approves a Wye Area alignment that does not include a UPRR/99 or Avenue 24 alignment within City limits (*i.e.*, if HSRA avoids making a decision that would be unacceptable to the City) and the City sues HSRA anyway.

5.2 HSRA shall not pursue recovery from the City of any costs incurred by HSRA in its preparation of the Record or otherwise associated with the preparation of the Record for the Chowchilla Lawsuit. By agreeing not to pursue recovery of such costs from the City, HSRA is not explicitly or implicitly waiving its rights to seek recovery from the petitioners and plaintiffs in the Related Lawsuits of the full amount of costs HSRA incurred in preparing the Record.

6. Reservation of Rights. Nothing in this Agreement, including the dismissal of the Chowchilla Lawsuit, shall affect the rights of the City in seeking to enforce or obtain a remedy for, or in connection with, any future approvals made by HSRA regarding the San Jose to Merced Section EIR or any EIR or other CEQA document that is the basis for a selection of alignments by HSRA in the Wye Area. HSRA waives any rights to claim in any such lawsuit that the City by entering the Agreement waived any arguments or claims regarding the San Jose to Merced Section EIR or any EIR or other CEQA document that is the basis for a selection of alignments in the Wye Area, except to the extent the City relies on such arguments or claims in seeking to enjoin or obtain a writ equivalent to an injunction stopping or suspending the ICS.

7. Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be given in writing by regular mail, overnight courier, facsimile, or as attachments to emails to:

If to HSRA:

California High Speed Rail Authority
Chief Counsel
770 L Street, Suite 800
Sacramento, CA 95814
Phone: (916) 324-1541
Fax: (916) 322-0827
tfellenz@hsr.ca.gov

With a copy to:

James Andrew
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244
Phone: (916) 323-1722
Fax: (916) 327-2319
Email: james.andrew@doj.ca.gov

If to the City:

City of Chowchilla
City Administrator
130 S. Second Street
Civic Center Plaza
Chowchilla, CA 93610
Phone: (559) 665-8615
Fax: (559) 665-7418
Email: mlewis@ci.chowchilla.ca.us

With a copy to:

Thomas Ebersole
Cota Cole LLP
730 North I Street, Suite 204
Madera, CA 93637
Phone: (559) 675-9006
Fax: (559) 675-9050
Email: tebersole@cotalawfirm.com

8. Representations and Warranties; General Provisions. Each of the Parties represents, warrants, and agrees as follows:

8.1 The descriptive headings and titles used in this Agreement are for convenience only and shall not affect the meaning of any provision of this Agreement.

8.2 Each Party to this Agreement has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement.

8.3 This Agreement contains all of the representations and the entire understanding and Agreement among the Parties with respect to the matters described in the Agreement. Correspondence, memoranda, and oral and written Agreements that

originated before the date of this Agreement are replaced in total by this Agreement unless otherwise expressly stated in this Agreement.

8.4 This Agreement may be modified or amended only by written agreement executed by all of the Parties.

8.5 Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights or benefits under or by reason of this Agreement. There are no third party beneficiaries of this Agreement.

8.6 In any litigation between the Parties regarding this Agreement, the prevailing party shall be entitled to recover, in addition to such other relief as may be granted, its reasonable costs and expenses, including reasonable attorneys' fees and court costs.

8.7 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one Agreement. One or more signatures on this Agreement may be executed and delivered by facsimile or by PDF or JPEG attachment to an email, and each such signature shall constitute an original and valid signature. This Agreement shall become effective immediately following execution by all of the Parties on the latest date appearing below.

8.8 If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the Court.

8.9 The individuals signing this Agreement on behalf of each Party represent and warrant that they have full authority and are duly authorized to do so on behalf of the Party they represent.

8.10 The Parties shall cooperate to ensure that the steps necessary to implement this Agreement are carried out. The Parties to this Agreement agree to execute any further documentation that may be required to carry out the purpose of this Agreement and perform all acts necessary to effectuate the provisions of this Agreement. If any dispute related to the terms of this agreement arise between or among the Parties, the Parties will first meet and discuss the dispute in good faith in an attempt to resolve it.

8.11 The Parties agree that specific performance is an appropriate remedy for enforcement of this Agreement.

9. Judgment. The Parties shall endeavor to have the terms of this Agreement incorporated into a judgment, but this Agreement is valid and binding even if a judgment cannot be obtained despite the best efforts of the Parties.

Dated: January 22, 2013

CITY OF CHOWCHILLA, a California
Municipal Corporation


Mayor Dennis Haworth

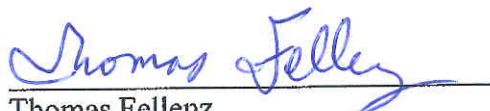
Dated: January 24, 2013

CALIFORNIA HIGH SPEED RAIL
AUTHORITY, a California State Agency


CEO Jeff Morales

APPROVED AS TO FORM:

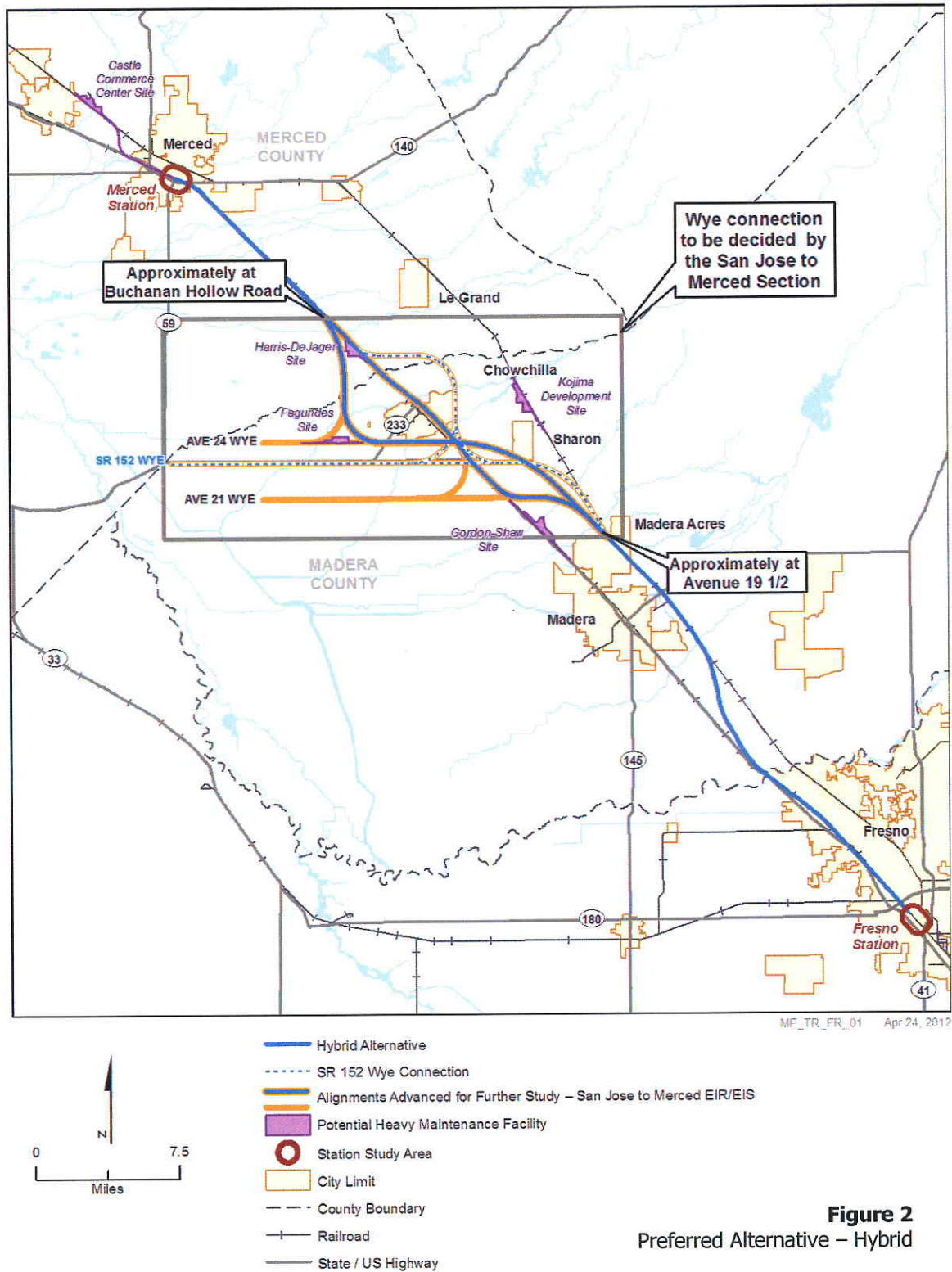
Dated: January 24, 2013


Thomas Fellenz
Chief Counsel
California High Speed Rail Authority

Dated: January 22, 2013


Thomas Ebersole
City Attorney
City of Chowchilla

ATTACHMENT A



ATTACHMENT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas Ebersole, Esq. CSBr# 205142 Cota Cole LLP, 730 North I Street, Suite 204, Madera, CA 93637 TELEPHONE NO.: (559) 675-9006 FAX NO. (Optional): (559) 675-9050 E-MAIL ADDRESS (Optional): tebersole@cotalawfirm.com ATTORNEY FOR (Name): Petitioner		FOR COURT USE ONLY CASE NUMBER: 34-2012-80001166
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: 720 9th Street, Sacramento, CA 95814 CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Civil		
PLAINTIFF/PETITIONER: City of Chowchilla, a California municipal corp. DEFENDANT/RESPONDENT: California High Speed Rail Authority, et al.		
REQUEST FOR DISMISSAL		
A conformed copy will not be returned by the clerk unless a method of return is provided with the document.		
This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)		

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☒ With prejudice (2) ☐ Without prejudice
 b. (1) ☐ Complaint (2) ☐ Petition
 (3) ☐ Cross-complaint filed by (name):
 (4) ☐ Cross-complaint filed by (name):
 (5) ☒ Entire action of all parties and all causes of action
 (6) ☐ Other (specify):*

on (date):

on (date):

2. (Complete in all cases except family law cases.)

The court ☐ did ☒ did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: January 23, 2013

Thomas Ebersole

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on (date):5. ☐ Dismissal entered on (date): as to only (name):6. ☐ Dismissal not entered as requested for the following reasons (specify):7. a. ☐ Attorney or party without attorney notified on (date):b. ☐ Attorney or party without attorney not notified. Filing party failed to provide☐ a copy to be conformed ☐ means to return conformed copy

Date:

Clerk, by _____, Deputy

ATTACHMENT C

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
MICHAEL R. BARR #56510
2 BLAINE I. GREEN #193028
ANDREW D. BLUTH #232387
3 Four Embarcadero Center, 22nd Floor
Post Office Box 2824
4 San Francisco, CA 94126-2824
Telephone: (415) 983-1000
5 Facsimile: (415) 983-1200

6 Attorneys for Interested Party
UNION PACIFIC RAILROAD COMPANY
7

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO

11 HIGH-SPEED RAIL AUTHORITY and
12 HIGH-SPEED PASSENGER TRAIN
FINANCE COMMITTEE, for the STATE
13 OF CALIFORNIA,

14 Plaintiffs,

15 vs.

16 ALL PERSONS INTERESTED IN THE
MATTER OF THE VALIDITY OF THE
17 AUTHORIZATION AND ISSUANCE OF
GENERAL OBLIGATION BONDS TO BE
18 ISSUED PURSUANT TO THE SAFE,
RELIABLE HIGH-SPEED PASSENGER
19 TRAIN BOND ACT FOR THE 21ST
CENTURY AND CERTAIN
20 PROCEEDINGS AND MATTERS
RELATED THERETO,

21 Defendants.
22

No. 34-2013-00140689

RESPONSIVE PLEADING AND
ANSWER OF INTERESTED PARTY
UNION PACIFIC RAILROAD
COMPANY, IN RESPONSE TO
COMPLAINT FOR VALIDATION

(Code Civ. Proc., § 860 et seq.)

23 To protect its interests and preserve its claims and rights of action, interested party
24 UNION PACIFIC RAILROAD COMPANY ("Union Pacific" or "UP") responds to the
25 Complaint For Validation ("Validation Complaint" or "Complaint") of Plaintiffs HIGH-
26 SPEED RAIL AUTHORITY ("CHSRA") and HIGH-SPEED PASSENGER TRAIN
27 FINANCE COMMITTEE ("Committee"), for the STATE OF CALIFORNIA (collectively,
28 "Plaintiffs") as follows:

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Memorandum of Understanding (as hereinafter alleged) and any related agreements between UP and CHSRA that may be executed in the future.

3. CHSRA has yet to produce detailed routes and service plans in the areas where it proposes to construct or operate HSR on, or in close proximity to, rights of way used by Union Pacific freight trains. Based on information that is currently available to Union Pacific, UP is unable to confirm or verify that CHSRA can achieve the trip-time requirements of the Bond Act and that CHSRA can do so while, as required by the MOU, avoiding disruption of UP freight operations. Therefore, it is premature for Plaintiffs to request, or for this Court to adjudge, that the HSR Project is in conformity with the trip-time requirements of the Bond Act, and UP objects to the extent Plaintiffs seek such an overbroad validation.

UNION PACIFIC'S FREIGHT RAIL NETWORK

4. Union Pacific is a publicly traded corporation, formed and existing under the laws of Delaware and qualified to do business in California. UP operates a freight rail franchise, in rights of way owned by UP and others, in California and twenty-two other states. The UP system is part of a national freight rail network that forms a vital link in the nation's interstate and international commerce. UP's freight tracks are located throughout the State of California, including in the Central Valley, in the Los Angeles Basin, and on the San Francisco Peninsula.³ UP serves all of the state's major ports, including the Port of Los Angeles, Port of Long Beach, and Port of Oakland. UP also facilitates international trade through border crossings that connect with rail networks in Mexico and Canada.

³ When Union Pacific's predecessor-in-interest, Southern Pacific Transportation Company, sold its mainline railroad right of way between San Jose and San Francisco to the Peninsula Corridor Joint Powers Board (which operates Caltrain) in 1991, it retained an exclusive perpetual easement for freight rail operations on the line. Through its predecessor, UP also retained sole rights to conduct intercity passenger service on the San Francisco-to-San Jose line. The Revised Business Plan proposes operating HSR trains and blended service on this right of way, but CHSRA has not acquired the rights to do so from UP, nor made a proposal to acquire such access rights, nor submitted a plan under which HSR trains could simultaneously use the existing rails without disrupting UP freight operations.

1 5. Union Pacific rights of way run in close proximity to, and in some locations
2 are encroached upon by, portions of the proposed right of way for the approximately 800-
3 mile HSR Project. At various stages in the development and environmental review of the
4 Project, UP has participated and commented on the Project in order to protect UP's freight
5 rail network and avoid impacts to its operations. During review of the Project, UP has
6 raised significant operational, safety, environmental, and other concerns arising from the
7 proposed construction and/or operation of the HSR Project on or adjacent to UP rights of
8 way.

9 CHSRA'S CHANGE TO "BLENDED SERVICE,"

10 AND THE MOU BETWEEN UNION PACIFIC AND CHSRA

11 6. Ever since the Project was proposed in California in the 1990s—and
12 continuing until last year—the Project's announced plan was to construct and operate high-
13 speed rail on new tracks dedicated to HSR service. That plan changed fundamentally in
14 April 2012, when CHSRA adopted a "Revised Business Plan." Under the Revised
15 Business Plan adopted last year, CHSRA proposes for the first time to operate high-speed
16 rail on existing tracks used for freight and commuter service, rather than on new tracks
17 designated for high-speed rail only. Elsewhere, CHSRA proposes having passengers
18 transfer to existing commuter service to complete their travel into urban areas such as Los
19 Angeles, Sacramento, and San Francisco. CHSRA refers to these proposals as "blended
20 service" or "blended operations" (collectively used in this Response as "blended service").⁴
21 Significantly, blended service has the potential to disrupt or impede severely Union
22 Pacific's existing and future freight-rail operations, and it is uncertain whether blended
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24 ⁴ The Revised 2012 Business Plan refers to *blended systems* and *blended operations*,
25 "which are the integration of high-speed trains with existing intercity and
26 regional/commuter rail systems via coordinated infrastructure (the system) and
27 scheduling, ticketing, and other means (operations)." See
28 www.cahighspeedrail.ca.gov/WorkArea/DownloadAsset.aspx?id=12242, last visited May
8, 2013. As Union Pacific understands CHSRA's proposal, the use of connections with
conventional commuter lines would decrease over a period of decades as additional
segments of the HSR system (dedicated to high-speed rail only) would be constructed.

1 service can meet the trip-time requirements of Proposition 1A (incorporated into the Bond
2 Act) for truly high-speed passenger rail.

3 7. When the Revised Business Plan was adopted, Union Pacific raised concerns
4 to CSHRA about how blended service could cause serious disruption to UP's existing and
5 future freight operations. UP subsequently engaged in negotiations with CHSRA and some
6 of the commuter railroads whose operations would be affected by blended service under the
7 Revised Business Plan, and on July 11, 2012, the parties executed a binding Memorandum
8 of Understanding and Implementation Agreement Related to High-Speed Rail Development
9 in California (the "MOU"). The MOU adopted several critical terms necessary to avoid
10 disruption of Union Pacific's freight operations and to protect Union Pacific's rights and
11 ability to continue meeting its common carrier obligations, including access to new and
12 existing customers. To further protect Union Pacific's rights in the future, as CHSRA
13 develops more specific routes and plans for HSR on particular segments that could affect
14 UP, the MOU specifically reserved UP's rights to participate in future proceedings,
15 including potential claims or litigation concerning any aspect or portion of the Project.

16 8. Since executing the MOU, Union Pacific and CHSRA have participated in
17 negotiations for the formation of additional definitive agreements that will be necessary for
18 construction of the Project to begin—including a construction and maintenance agreement,
19 an engineering agreement, and an insurance and indemnity agreement—but no such
20 agreements have yet been made. CHSRA's alignment, construction, and operational plans
21 for HSR in general—and blended service in particular—likewise have yet to be developed.
22 Because the Project's specific routes and service patterns have not been established, Union
23 Pacific is unable to verify whether CHSRA can satisfy its commitments to UP under the
24 MOU to avoid disruption of freight operations, and at the same time achieve the trip-time
25 requirements for high-speed rail under the Bond Act. Given these uncertainties, it is
26 premature for CHSRA to request a judicial determination that the proposed HSR Project is
27 consistent with the trip-time requirements of the Bond Act. To the extent CHSRA seeks
28 such a declaration through this Validation Lawsuit, Union Pacific must object to protect its

1 interests—and specifically to ensure that, once the Project’s specific routes and service
2 patterns are established, CHSRA meets its commitments under the MOU so that freight
3 operations are not disrupted.

4 THE BROAD SCOPE OF PLAINTIFFS’ LAWSUIT
5 REQUIRES UNION PACIFIC TO RESPOND TO PROTECT ITS INTERESTS
6 AND PRESERVE ITS CLAIMS

7 9. The Validation Complaint makes no allegations regarding the trip-time
8 requirements of the Bond Act under § 2704.09. Nevertheless, the Validation Complaint
9 invokes Proposition 1A as “codified in the Bond Act” (Compl., ¶ 7) and broadly seeks a
10 judgment finding that the bonds have been properly issued in accordance with all Bond Act
11 requirements. Specifically, Plaintiffs request a judgment determining that the bonds are
12 “consistent” with the Bond Act (Compl., ¶ 1); that all conditions precedent have been
13 satisfied (Compl., Prayer, ¶ 3(a)); that all proceedings in connection with the bonds “were,
14 are, and will be in conformity” with the applicable provisions of “all laws and enactments”
15 (Compl., Prayer, ¶ 3(c)); and that any challenges (including pending challenges) based on
16 uses of proceeds of the bonds will not affect the determination of validity of the bonds
17 (Compl., Prayer, ¶ 3(e)). The Complaint also requests a broad injunction against any future
18 litigation, to restrain “all persons or entities” from the institution of any action challenging
19 “any matters herein adjudicated or which could have been adjudicated.” (Compl., Prayer, ¶
20 4.)

21 10. Plaintiffs have taken the position this Validation Lawsuit is related to *Tos v.*
22 *California High Speed Rail Authority* (“*Tos*”), Sacramento Superior Court Case No. 34-
23 2011-00113919. The plaintiffs in that case assert a claim for “Violation of Proposition 1A:
24 2 Hour 40 Minute Travel Time Requirement Not Met.”⁵ (Sec. Am. Complaint, at p. 8.) In
25 the notice of related case filed with the Validation Complaint, CHSRA and the Committee

26 ⁵ In the *Tos* case, CHSRA acknowledges “the bond act requires that the high-speed train
27 system be designed to achieve nine specified performance characteristics,” and CHSRA
28 contends it meets those trip-time requirements. (Opp. to Plaintiffs’ Part I Opening Brief,
at 5:12-17 and at 36:5-16.)

1 explained that *Tos* and this Validation Lawsuit “are related because one challenges the
2 authorization of bonds that the other seeks to validate,” and the Court ordered the cases
3 related on that basis. Plaintiffs have since filed a motion to consolidate the Validation
4 Lawsuit with *Tos*, stating there are “overlapping issues” and “to the extent that *Tos*
5 challenges the authorization of bonds, it could have been brought as a validation action, and
6 consolidation is necessary to ensure that a single judgment resolves any questions
7 concerning the validity of the bonds.”

8 11. In light of the overbroad, prospective and preclusive judgment sought herein
9 by Plaintiffs (Compl., Prayer, ¶ 3), against “all persons interested in the matter of the bonds
10 . . . and other matters related thereto” (Compl., ¶ 5), and given Plaintiffs’ apparent position
11 that all claims relating to compliance with the Bond Act must be adjudicated herein
12 (Compl., Prayer, ¶ 3), Union Pacific files this responsive pleading to protect its interests in
13 ensuring that CHSRA complies with the commitments in the MOU not to disrupt UP
14 freight operations, and to preserve Union Pacific’s claims in relation to the trip-time
15 requirements of the Bond Act.

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1 Parties

2 3. Answering Paragraph 3, UP avers that Paragraph 3 contains legal argument
3 and introductory statements which do not require a response. Further answering Paragraph
4 3, UP does not have sufficient knowledge to admit or deny the allegations and, on that
5 basis, denies, specifically and generally, each and every allegation therein.

6 4. Answering Paragraph 4, UP avers that Paragraph 4 contains legal argument
7 and introductory statements which do not require a response. Further answering Paragraph
8 4, UP does not have sufficient knowledge to admit or deny the allegations and, on that
9 basis, denies, specifically and generally, each and every allegation therein.

10 5. Answering Paragraph 5, UP avers that Paragraph 5 contains legal argument
11 and introductory statements which do not require a response. Further answering Paragraph
12 5, UP avers that the first sentence of Paragraph 5 is uncertain, ambiguous, and vague in that
13 it fails to identify phases of construction of the Project that may or may not be subject to the
14 Validation Lawsuit; and fails to specify precisely which bonds, commercial paper notes,
15 refunding bonds, and contracts it references and/or seeks to validate, including conditions to
16 the bond offering set forth in Proposition 1A, such as trip-time requirements. Further
17 answering Paragraph 5, UP admits that it is an interested party in the matter of the validity
18 of the bonds and related documents and actions that are the subject of this Validation
19 Lawsuit, to the extent those bonds, documents and actions are deemed adequately described
20 by the Complaint. Further answering Paragraph 5, to the extent the statements in Paragraph
21 5 are deemed to be factual and requiring a response, UP avers it does not have sufficient
22 knowledge to admit or deny the remaining allegations in Paragraph 5 and, on that basis,
23 denies, specifically and generally, the remaining allegations.

24 Jurisdiction and Venue

25 6. Answering Paragraph 6, UP avers that Paragraph 6 contains legal argument
26 and introductory statements which do not require a response.
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1 the allegations in Paragraph 10 and, on that basis, denies, specifically and generally, each
2 and every allegation therein.

3 11. Answering Paragraph 11, UP avers that Paragraph 11 contains legal
4 argument and introductory statements which do not require a response. Further answering
5 Paragraph 11, UP does not have sufficient knowledge to admit or deny the allegations and,
6 on that basis, denies, specifically and generally, each and every allegation therein.

7 12. Answering Paragraph 12, UP avers that Paragraph 12 contains legal
8 argument and introductory statements which do not require a response. Further answering
9 Paragraph 12, UP avers that Paragraph 12 is uncertain, ambiguous, and vague in that it fails
10 to identify specific portions of the bonds, notes, refunding bonds, and bond offering,
11 including attendant conditions set forth in Proposition 1A, such as trip-time requirements.
12 Further answering Paragraph 12, UP does not have sufficient knowledge to admit or deny
13 the allegations and, on that basis, denies, specifically and generally, each and every
14 allegation therein.

15 Statutory Authority for Institution of Validation Proceedings

16 13. Answering Paragraph 13, UP avers that Paragraph 13 contains legal
17 argument and introductory statements which do not require a response.

18 14. Answering Paragraph 14, UP avers that Paragraph 14 contains legal
19 argument and introductory statements which do not require a response.

20 15. Answering Paragraph 15, UP avers that Paragraph 15 contains legal
21 argument and introductory statements which do not require a response. Further answering
22 Paragraph 15, UP avers that Paragraph 15 is uncertain, ambiguous, and vague in that it fails
23 to identify phases of construction of the Project that may or may not be subject to the
24 Validation Lawsuit, and fails to specify precisely which bonds, commercial paper notes,
25 refunding bonds, and contracts it references and/or seeks to validate, including attendant
26 conditions to the bond offering set forth in Proposition 1A, such as trip-time requirements.

27 Service

28 16. Answering Paragraph 16, UP admits the allegations in Paragraph 16.

1 17. Answering Paragraph 17, UP denies the allegations of Paragraph 17.

2 18. Answering Paragraph 18, UP avers that Paragraph 18 contains legal
3 argument and introductory statements which do not require a response. Further answering
4 Paragraph 18, UP does not have sufficient knowledge to admit or deny the allegations in
5 Paragraph 18 and, on that basis, denies, specifically and generally, each and every
6 allegation therein.

7 Determination of Validity of Bonds

8 19. Answering Paragraph 19, UP avers that subsections b, c, and d of Paragraph
9 19 are uncertain, ambiguous, and vague in that they fail to identify the specific laws and
10 enactments to which they refer; fail to identify phases of construction of the Project that
11 may or may not be subject to the Validation Lawsuit; fail to specify precisely which bonds,
12 commercial paper notes, refunding bonds, and contracts they reference and/or seek to
13 validate; and fail to specify portions of the bond offering including attendant conditions to
14 the bond offering set forth in Proposition 1A, such as trip-time requirements. To the extent
15 the statements in Paragraph 19 are deemed to be factual and requiring a response, UP
16 denies, specifically and generally, each and every allegation therein.

17 ADDITIONAL DEFENSES

18 For a further answer to the Complaint and by way of additional defenses, Union
19 Pacific incorporates by reference all the foregoing paragraphs of this Responsive Pleading
20 and Answer, and further alleges as follows:

21 FIRST DEFENSE

22 (Failure to State a Claim)

23 The Complaint fails to state facts sufficient to state any cause of action against
24 Union Pacific.

25 SECOND DEFENSE

26 (Uncertainty)

27 The Complaint is uncertain, ambiguous, and vague in defining the nature of the
28 actions sought to be validated and the scope of the relief requested.

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THIRD DEFENSE

(Lack of Specificity)

The Complaint lacks the specificity required by law, such as to allow this Court to provide Plaintiffs the relief they request. In particular, the Complaint fails to identify phases of construction of the HSR Project that may or may not be subject to the Validation Lawsuit; fails to specify precisely which bonds, commercial paper notes, refunding bonds, contracts and related actions it references and/or seeks to validate; fails to specify the portions of the bond offering as to which bond funds have been appropriated, and segments of the Project for which such bond proceeds will be used; fails to identify each of the specific laws and enactments to which it refers; and fails to identify the procedural, substantive and performance requirements for funding under the Bond Act, including trip-time requirements.

FOURTH DEFENSE

(Ripeness)

There is no ripe case or controversy because conditions of the bond offering mandated by Proposition 1A, which affect the validity of the bonds and bond offering, have not yet occurred. Given the breadth and scope of the Complaint, the validation action is premature.

FIFTH DEFENSE

(Estoppel)

Due to Plaintiffs' own actions and inactions, and Union Pacific's reasonable reliance thereon, Plaintiffs are estopped from maintaining the claims for relief set forth in the Complaint.

SIXTH DEFENSE

(Waiver)

By reason of Plaintiffs' actions, representations, conduct and/or omissions to act, Plaintiffs have waived each and every alleged cause of action against Union Pacific set forth in the Complaint.

1 SEVENTH DEFENSE

2 (Balancing the Equities)

3 The equities in this case weigh against the relief that Plaintiffs seek.

4 EIGHTH DEFENSE

5 (Reservation of Defenses)

6 Union Pacific reserves all other defenses that may potentially become available as a
7 result of information developed during the case.

8 PRAYER FOR RELIEF

9 WHEREFORE, Union Pacific respectfully requests the Court enter judgment as
10 follows:

11 A. For a determination that it is premature for Plaintiffs to request, or for this
12 Court to adjudge, that the HSR Project is in conformity with the trip-time requirements of
13 the Bond Act, as set forth in section 2704.09 of the Streets & Highways Code;

14 B. To the extent a judgment of validation is entered, Union Pacific requests that
15 such judgment be limited to, and state, as follows:

16 1. This action is properly brought under Code of Civil Procedure § 860
17 *et seq.*, Government Code § 17700, and Street and Highways Code
18 §§ 2704.12 and 2704.13 (“Bond Issuance Law”), of which the latter is part
19 of the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st
20 Century, Street and Highways Code § 2704, *et seq.* (“HST Act”);

21 2. All proceedings by and for Plaintiffs in connection with issuance of
22 the Bonds, Notes, and any Refunding Bonds (each as defined in the
23 Complaint for Validation) pursuant to the Bond Issuance Law, including the
24 adoption of Resolution IX and Resolution X for the authorization of the
25 issuance and sale of the Bonds, Notes, and any Refunding Bonds, were, are,
26 and will be valid and binding, and were, are, and will be in conformity with
27 the provisions of the Bond Issuance Law;
28

1 3. The Bonds, Notes, and any Refunding Bonds to be issued and sold,
2 when executed and delivered, and any contracts related to the sale of the
3 Bonds, Notes, or any Refunding Bonds, will constitute valid and binding
4 obligations of the State of California under the Constitution and laws of the
5 State of California;

6 4. Challenges (including pending challenges) based on uses of proceeds
7 of the Bonds, Notes, or any Refunding Bonds, will not affect the
8 determination of validity of the Bonds, Notes, and any Refunding Bonds to
9 be issued and sold, or the validity of any contracts relating to the sale of any
10 Bonds, Notes, and any Refunding Bonds;

11 5. This judgment binds and permanently enjoins any and all persons
12 and entities, public or private, from the institution of any action or
13 proceeding challenging the validity of the issuance or sale of the Bonds,
14 Notes, or any Refunding Bonds, or of any contracts related to the issuance
15 and sale of the Bonds, Notes, or any Refunding Bonds as determined in
16 sections 1 through 4 inclusive of this judgment, and the payment of principal
17 and interest on the Bonds, Notes, or any Refunding Bonds;

18 6. The adjudication or determination of any challenges now or hereafter
19 based on or relating to implementation or use of proceeds of the Bonds,
20 Notes, or any Refunding Bonds; compliance of the high-speed rail project
21 with the criteria and requirements set forth in the HST Act other than the
22 Bond Issuance Law; the obligations of the High Speed Rail Authority
23 pursuant to that certain Memorandum of Understanding and Implementation
24 Agreement Related to High-Speed Rail Development in California dated
25 July 11, 2012; and other matters arising after the 60-day period in this action
26 specified in Code of Civil Procedure § 860, or any other matter not expressly
27 set forth and determined in sections 1 through 4 inclusive of this judgment,
28 are outside and beyond the scope of this judgment.

1 C. That Union Pacific be awarded reasonable attorneys' fees, as may be
2 allowed by statute or otherwise by law;

3 D. That Union Pacific be awarded costs of suit herein; and

4 E. That Union Pacific be awarded such other and further relief that the Court
5 may deem just and proper.

6 Dated: May 9, 2013.

7 PILLSBURY WINTHROP SHAW PITTMAN LLP
8 MICHAEL R. BARR
9 BLAINE I. GREEN
10 ANDREW D. BLUTH
11 Four Embarcadero Center, 22nd Floor
12 Post Office Box 2824
13 San Francisco, CA 94126-2824

14 By: _____

15 Blaine I. Green

16 Attorneys for Interested Party
17 UNION PACIFIC RAILROAD COMPANY
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VERIFICATION

I, Jerry S. Wilmoth, declare that I am General Manager of Network Infrastructure for Petitioner for UNION PACIFIC RAILROAD COMPANY, an interested party in this action, and am authorized to make this verification for and on behalf of said interested party, and I make this verification for that reason.

I declare that I have read the foregoing RESPONSIVE PLEADING AND ANSWER OF INTERESTED PARTY UNION PACIFIC RAILROAD COMPANY, IN RESPONSE TO COMPLAINT FOR VALIDATION and know its contents. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of May, 2013.



RECEIVED

MAY 13 2013

GRISWOLD, LaSALLE
COBE, DOWNS & SON



DJ Mitchell II
Assistant Vice President
Passenger Operations

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April 16, 2013

Mr. Joseph J. Metzler
Manager- Operations and Maintenance
Project Management Team for CAHSRA
On the behalf of the NCRPWG
Parsons Brinckerhoff
303 Second Street
Suite 700 North
San Francisco, CA 94107

RE: PB-BNSF-3146--California High Speed Rail Authority-Rail Service Concepts for 2018-2025 BNSF Network Capacity Models

Dear Mr. Metzler:

This is in reference to your letter and the request you forwarded in February on behalf of the California High Speed Rail Authority for modeling and review of various proposed passenger rail blended service plans

We have generally reviewed and looked over these plans, but we are at a point in our understanding of intercity passenger rail planning in the San Joaquin Valley that we are at present unable to proceed to more specific planning or review of these materials. This is in light of frankly a great deal of ambiguity and contradictions in the different materials that have been forwarded, in the public statements being made and in the absence of any kind of understanding or agreement with the public agency sponsors of these programs. It is unclear what plans are ready to be progressed on behalf of the Authority and under what terms we should consider them.

In that regard, six intercity rail service options have been forwarded which may be internally inconsistent with respect to the extent to which they would involve BNSF right of way, trackage, or the construction of new railroad sometimes adjacent to and sometimes over BNSF right of way. It is also unclear the extent to which these options would use conventional FRA compliant rolling stock at speeds below 90 MPH or other alternatives.

With respect to truly high speed passenger rail service, elements of the options under consideration appear to be inconsistent with materials or plans that the Authority has submitted in descriptions to the Surface Transportation Board for exemption, and what the Authority has submitted for environmental review. Thus, there appears to be too much ambiguity at this time for a productive review of these plans.

In order to progress this effectively, we ask that the Authority provide us with a draft engineering agreement that contains a scope of work and budget that can be reviewed and for the Authority to specify the corridor alignment that is the realistic plan they might be advancing. As we have emphasized since our first discussions with prior officers of the Authority, it will also be essential



to address the safety implications, risk mitigation strategy and liability associated with any construction near or adjacent to our track as well as for future operations. We would then be in a better position to have meaningful discussions on how this could progress. BNSF has not agreed to or acquiesced in any proposed or potential alignment or change in service in the San Joaquin Valley involving our railroad, whether on, near, or adjacent to, our current right-of-way, or which could affect current or future rail service on our line, or could affect access to our line by present or future freight customers. In order for BNSF to progress any particular segment we will need to understand how these issues are addressed as to the entire proposed line through the San Joaquin Valley.

By the same token, we are not clear with whom we are actually negotiating or what agency would be the responsible entity progressing these plans, whether they are for truly high speed service or for what is being called Blended Service. For that reason I am copying Frank Vacca of CAHSRA and Bill Bronte of Caltrans to help us understand how all of this is to progress, and please feel free to forward this letter to the various parties copied on your initial letter to us as appropriate. With respect to the Authority's two Blended Service options and Caltrans' three service options A, B, and C, we believe it is necessary for the appropriate public agency intercity passenger rail sponsors to make some key decisions:

- Determine which one of the five conventional train speed options should be used as the foundation for any additional service agreement negotiations;
- Confirm that the service option selected consists of Amtrak service as part of its existing network and normal operations, whether operating on BNSF track or facilities constructed by the Authority;
- Identify a lead agency with which BNSF would negotiate;
- Provide BNSF with a projected timeline for the implementation of the proposed additional service; and,
- Confirm, as discussed in recent meetings, that Design-Build will not be used as a project delivery method where CHSRA construction will impact BNSF property or customers.

The different options and scenarios of your various alternative plans, some of which are very aggressive levels of passenger train service, could require significantly different capital infrastructure requirements to permit service and analysis of impacts on future freight service capacity and even access to our own line as a result of potential parallel structures along the right-of-way. In a similar vein, if the agencies envision something along the lines of the Amtrak metrics and standards to apply to this service for measurement of on-time performance, that will also involve significantly increased infrastructure and capital investment to ensure future intercity passenger rail service compatible with the preservation of freight capacity and mobility.

While we appreciate the work Parsons Brinckerhoff has been doing on this project, it is now essential that we have direct contact with whatever authority we would be negotiating definitive agreements if these projects are to be progressed. Therefore, as indicated earlier, we are copying Messrs. Vacca and Bronte for their determination of which agency we should be working with



on which agreement for which service. When we are advised with whom at the appropriate agency we should discuss how best to progress this, we can plan a follow-up call or meeting to include myself and Rick Weicher as we coordinate these efforts for BNSF, consistent with our previous direct meetings with prior representatives for and officers of the California High Speed Rail Authority.

Sincerely,

A handwritten signature in black ink, appearing to read "DJ Mitchell II", written over a light gray circular background.

DJ Mitchell II
Passenger Operations

cc: Frank Vacca, Chief Program Manager, California High-Speed Rail Authority
Bill Bronte, Division Chief, Division of Rail, Caltrans
Karen Greene Ross, Assistant Chief Counsel, California High-Speed Rail Authority
Gil Mallery, Parsons Brinkerhoff
Rick Weicher, BNSF Railway
Walt Smith, BNSF Railway

Progress Report for April 2013

MERCED - FRESNO SUBSECTION

Tasks 9 & 10 Progress Report

Segment 1 limit is defined from Ashlan Avenue to Avenue 7. (City of Fresno & Madera County)

Segment 2 limit is defined from Avenue 7 to Avenue 17. (Madera County)

Major / Key Issues and Areas of Concern

SCOPE:

Right-of-Way (ROW): Approximately 138 parcels of ROW are required for Construction Package 1 (CP1) between Ashlan Avenue and Avenue 7 (Segment 1), including the relocation of Golden State Boulevard to the north of Herndon Avenue. Future Veterans Blvd. is no longer part of this scope of work, because the City of Fresno will complete the ROW as part of their ongoing work in this area.

Additional preliminary ROW activities are underway for the CP1 Extension Option (Segment 2) from Avenue 7 to Avenue 17. Approximately 96 parcels are within this segment. ROW Engineering and Appraisal Activities progress to date include:

1. ROW boundary surveys for Segments 1 and 2 are approximately 98% complete.
2. ROW appraisal maps for Segments 1 and 2 are approximately 90% complete. Revisions due to change in appraisal-map approach and engineering ROW refinements.
3. ROW Title Reports for Segments 1 and 2 are approximately 60% complete. Reduction in percent complete due to Authority request for title reports received over 1 year.
4. Initial Site Assessments (Haz-Mat investigations Phase 1 for Segments 1 and 2 are approximately 98% complete. Phase 2 in Segment 1 is complete (10 sites were identified, PTEs were received for 5 sites, and all 5 sites' Phase 2 analyses were completed). PTE for Segment 2 Phase 2 have been sent out. Mitigation site ISA reports have been submitted and loaded to PS2.
5. Received Appraisals for 97 parcels (Segment 1). See Appraisal table below for progress.
6. Assisting with the Cultural and Biological Permission To Enter (PTE) as part of the ROW task. (incorporated in AWP Rev 4),
7. AECOM/CH2M Hill and BRI Program Management task, which is assisting the CHSRA ROW on addressing guidance, policies, and procedures, is out of scope but is approved by Authority/PMT.
8. Appraised remaining 4 EA sites (26 parcels) for proposed mitigation. (Incorporated in AWP Rev 4).
9. Updated priority list from Authority/PMT with the addition of UPRR, mitigation land, procurement package, etc. Need to re-define and re-categorize priority rankings.
10. Reviewing, supporting, and providing feedback to the Acquisition Plans performed by Paragon Partners. (Out of Scope) AECOM is scoped to perform the appraisal component of this ROW task. Acquisition Planning should be part of the acquisition component, which is a separate ROW contract.

11. Appraise UPRR parcels. (Incorporated in AWP Rev 4 but waiting for access agreement).

ROW Labels	Count of Appraisals	Count of NODA Requests Approved	Count of NODA Sent	Count of Inspections Completed	Count of Draft AG Appraisal Complete	Count of External Reviews Complete	Count of Transmittal to JV/AECOM complete
AECOM	234	231	230	217	149	99	97
1	138	136	136	132	114	99	97
2	96	95	94	85	35	0	0
9 Mitigation	34	26	26	26	0	0	0

SCHEDULE:

Right-of-Way (ROW): Updates of estimated property values in the appraisals submitted prior to January 2013 have been requested by the Authority. Revisions of appraisals have been given a high priority. This required a review of all deliverables and established a new priority list.

Engineering refinements will continue to impact ROW schedule. Without final improvement design details (horizontal and vertical), the ability to perform ROW appraisal becomes challenging.

BUDGET:

Right-of-Way (ROW):

1. The Authority utilized BRI from the AECOM/CH2M Hill ROW Team to assist the Authority's program management in FY11/12. The Authority is continuing to utilize BRI for supplementing the Authority's ROW program management within FY 12/13. The AECOM/CH2M Hill ROW Team has incorporated these requirements within the FY12/13 AWP v4.
2. Mid March, the Authority directed the M-F ROW Team to revise property value estimates for parcels submitted prior to January 2013. This additional task will impact the budget as it relates to deliverable prioritizing.

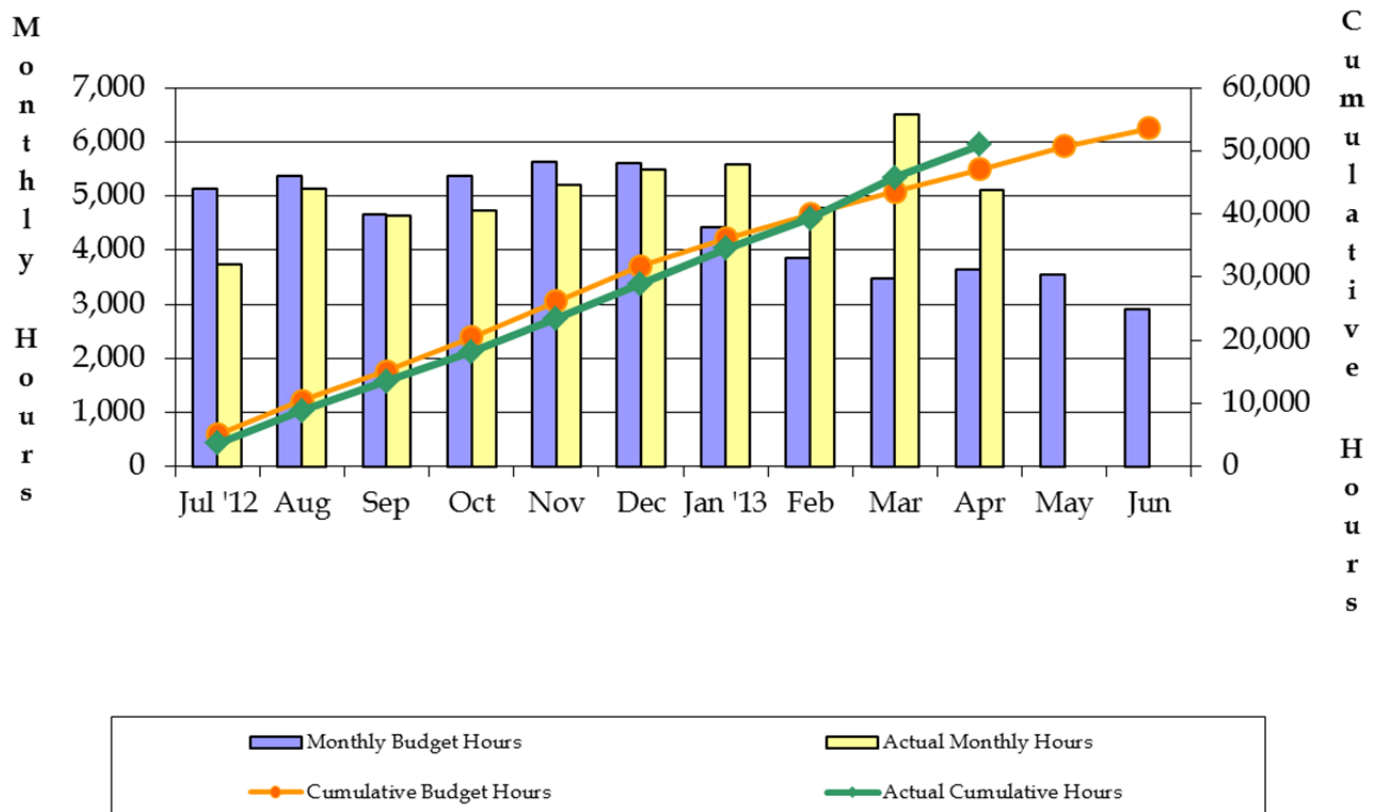
Financial Reporting

Budget: On July 27th Limited-Notice-to-Proceed-1 (LNTP-01) was issued for Task 10 for \$2,350,000. On November 16th Limited-Notice-to-Proceed-1A (LNTP-01A) was issued for Task 10 for a total value of \$4,128,378. On March 29^h Limited-Notice-to-Proceed-1B (LNTP-01B) was issued for Task 10 for a total value of \$5,500,000. Per the AWP Rev 4 submitted January 31, 2013, the LNTP-01, LNTP-01A & LNTP-01B budgets issued represent 100% of the planned AWP Scope of work, if there are no changes to the schedule or to the priorities of the scoped tasks. Budgeted hours and dollars are based on the submitted AWP.

Fiscal Year Hours

The staff hours worked for Task 10 total to 5,117 labor hours for the month of April, which was 40.7% above the monthly budgeted hours (3,636) for April. Cumulative labor hours (50,889) from July 1st to date are 8% above the budgeted labor hours (47,128) for the fiscal year to date.

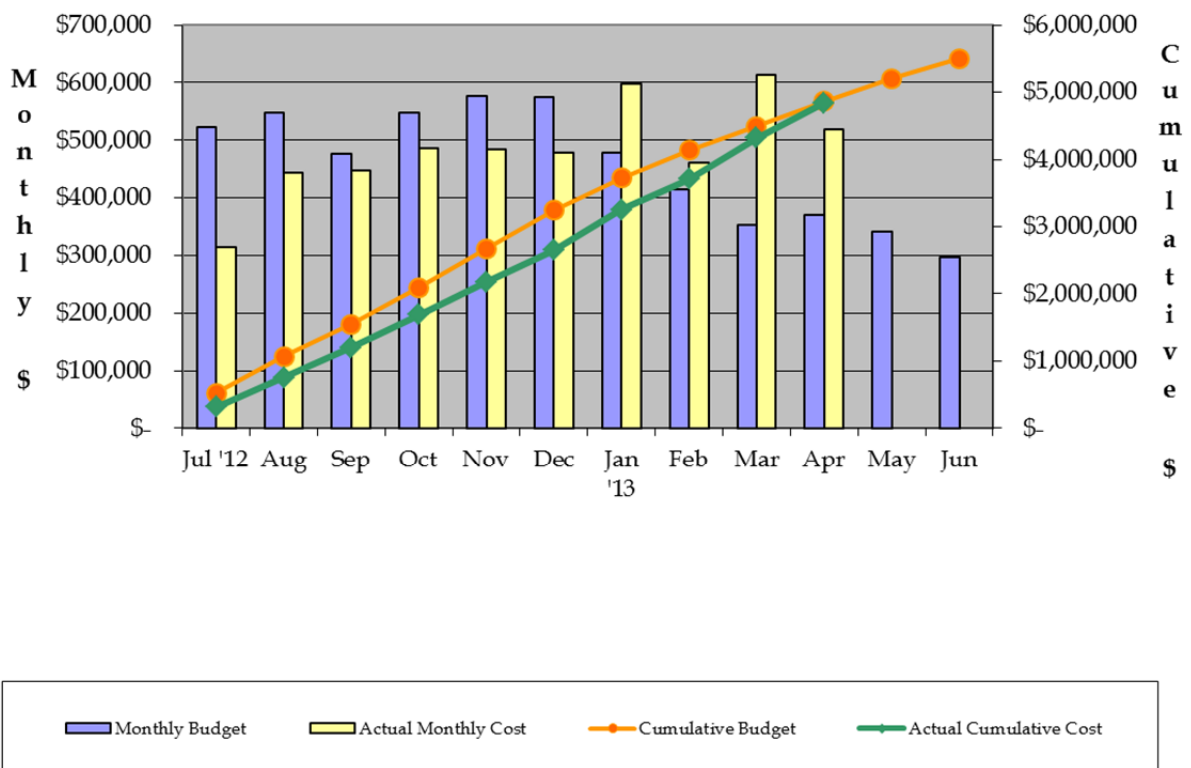
Hours Summary FY 2012 - 2013



Fiscal Year Dollars

Task 10 expenditures for the month of April were \$517,958, which was 39.8% above the budget of \$370,458. Cumulative dollars (\$4,840,644) from July 1 to date were approximately 0.5% below budget (\$4,862,622) for the fiscal year.

Cost Summary FY 2012 – 2013



Fiscal Year Total Hours / Dollars

Section:		Merced to Fresno											
Regional Consultant		AECOM											
Hour Summary		FY 2012 -2013											
HOURS													
Budgeted	Total	July	August	September	October	November	December	January	February	March	April	May	June
1 Project Management	9,425	957	1,001	870	900	861	817	788	685	719	618	647	562
2 Public / Agency Participation	3,578	313	328	273	314	301	287	314	273	287	301	314	273
3 Alternative Analysis	-	-	-	-	-	-	-	-	-	-	-	-	-
4 Engineering													
15% Preliminary Engineering	-	-	-	-	-	-	-	-	-	-	-	-	-
30% Preliminary Engineering	11,657	1,737	1,816	1,579	1,223	880	829	664	577	606	591	618	537
5 EIR / EIS Analysis	-	-	-	-	-	-	-	-	-	-	-	-	-
6 Station Area Planning	-	-	-	-	-	-	-	-	-	-	-	-	-
7 Draft & Final EIR/EIS	-	-	-	-	-	-	-	-	-	-	-	-	-
8 Certification of EIR/EIS & ROD	37,308	3,737	4,029	3,504	2,833	2,710	2,638	3,157	2,746	3,069	3,215	3,087	2,583
9 ROW EIR/EIS Process	-	-	-	-	-	-	-	-	-	-	-	-	-
10 ROW Activities	53,395	5,127	5,360	4,661	5,360	5,635	5,610	4,423	3,846	3,470	3,636	3,351	2,916
ODC ODCs	-	-	-	-	-	-	-	-	-	-	-	-	-
Totals	115,363	11,871	12,534	10,887	10,630	10,387	10,181	9,346	8,127	8,151	8,361	8,017	6,871
20,508													
Actual / Forecast	Total	July	August	September	October	November	December	January	February	March	April	May	June
1 Project Management	8,184	471	815	743	1,010	564	678	691	606	660	737	647	562
2 Public / Agency Participation	3,911	230	734	246	303	148	653	199	264	356	191	314	273
3 Alternative Analysis	-	-	-	-	-	-	-	-	-	-	-	-	-
4 Engineering													
15% Preliminary Engineering	-	-	-	-	-	-	-	-	-	-	-	-	-
30% Preliminary Engineering	8,771	552	716	875	882	1,149	541	499	723	936	743	618	537
5 EIR / EIS Analysis	-	-	-	-	-	-	-	-	-	-	-	-	-
6 Station Area Planning	-	-	-	-	-	-	-	-	-	-	-	-	-
7 Draft & Final EIR/EIS	-	-	-	-	-	-	-	-	-	-	-	-	-
8 Certification of EIR/EIS & ROD	38,563	2,375	3,685	2,883	3,965	1,309	2,710	2,732	3,247	5,434	4,553	3,087	2,583
9 ROW EIR/EIS Process	-	-	-	-	-	-	-	-	-	-	-	-	-
10 ROW Activities	57,182	3,727	5,128	4,629	4,738	5,193	5,493	5,580	4,804	6,506	5,117	3,351	2,916
ODC ODCs	-	-	-	-	-	-	-	-	-	-	-	-	-
Monthly Totals	116,612	7,355	11,078	9,376	10,898	8,363	10,075	9,701	9,644	13,892	11,341	8,017	6,871
Cumulative Totals		7,355	18,433	27,810	38,708	47,071	57,146	66,847	76,491	90,383	101,724	109,741	116,612
Cost Summary	FY 2012 -2013												
DOLLARS													
Budgeted	Total	July	August	September	October	November	December	January	February	March	April	May	June
1 Project Management	\$1,334,034	\$136,637	\$142,848	\$124,215	\$123,671	\$118,294	\$112,535	\$114,876	\$99,892	\$104,887	\$86,707	\$90,648	\$78,824
2 Public / Agency Participation	\$368,893	\$32,282	\$33,749	\$28,173	\$32,399	\$30,991	\$29,582	\$32,399	\$28,173	\$29,582	\$30,991	\$32,399	\$28,173
3 Alternative Analysis	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4 Engineering													
15% Preliminary Engineering	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30% Preliminary Engineering	\$1,688,139	\$242,189	\$252,524	\$226,537	\$175,557	\$130,055	\$122,626	\$101,064	\$87,882	\$92,276	\$87,130	\$91,090	\$79,209
5 EIR / EIS Analysis	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6 Station Area Planning	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7 Draft & Final EIR/EIS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8 Certification of EIR/EIS & ROD	\$4,404,729	\$445,895	\$479,411	\$416,879	\$340,930	\$326,107	\$316,010	\$362,153	\$314,915	\$352,733	\$369,530	\$369,704	\$310,462
9 ROW EIR/EIS Process	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
10 ROW Activities	\$5,500,000	\$523,375	\$547,164	\$475,795	\$547,164	\$577,645	\$574,868	\$477,402	\$415,132	\$353,619	\$370,458	\$340,923	\$296,455
ODC ODCs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Totals	\$13,295,795	\$1,380,378	\$1,455,696	\$1,271,599	\$1,219,721	\$1,183,092	\$1,155,621	\$1,087,894	\$945,994	\$933,097	\$944,816	\$924,764	\$793,123
\$2,093,498		\$857,003	\$908,532	\$795,804	\$672,557	\$605,447	\$580,753	\$610,492	\$530,862	\$579,478	\$574,358	\$583,841	\$496,668
Actual / Forecast	Total	July	August	September	October	November	December	January	February	March	April	May	June
1 Project Management	\$1,167,903	\$76,042	\$120,793	\$110,119	\$138,193	\$84,596	\$97,718	\$99,019	\$77,185	\$100,630	\$94,136	\$90,648	\$78,824
2 Public / Agency Participation	\$360,491	\$20,548	\$30,424	\$25,231	\$30,396	\$13,586	\$63,709	\$26,881	\$35,769	\$35,444	\$17,931	\$32,399	\$28,173
3 Alternative Analysis	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
4 Engineering													
15% Preliminary Engineering	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30% Preliminary Engineering	\$1,255,362	\$77,123	\$161,513	\$117,237	\$151,860	\$55,238	\$92,241	\$77,444	\$114,683	\$138,359	\$99,365	\$91,090	\$79,209
5 EIR / EIS Analysis	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
6 Station Area Planning	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
7 Draft & Final EIR/EIS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
8 Certification of EIR/EIS & ROD	\$4,392,326	\$247,289	\$402,190	\$323,325	\$456,874	\$159,726	\$333,619	\$319,530	\$359,483	\$621,482	\$488,642	\$369,704	\$310,462
9 ROW EIR/EIS Process	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
10 ROW Activities	\$5,480,606	\$313,380	\$443,485	\$446,662	\$485,870	\$483,949	\$477,950	\$597,673	\$463,145	\$613,156	\$517,958	\$340,923	\$296,455
ODC ODCs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Monthly Totals	12,656,688	\$734,382	\$1,158,405	\$1,022,574	\$1,263,193	\$797,095	\$1,065,237	\$1,120,547	\$1,050,265	\$1,509,071	\$1,218,032	\$924,764	\$793,123
Cumulative Totals		\$734,382	1,892,787	2,915,361	4,178,554	4,975,649	6,040,886	7,161,433	8,211,698	9,720,769	10,938,801	11,863,565	12,656,688
Forecast in RED													

Program Total Hours / Dollars

Hour Summary		FY 2006 -2014									
HOURS											
	Budgeted	Total	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
1	Project Management	38,017	410	145	1,200	3,784	6,276	7,807	9,425	8,970	-
2	Public / Agency Participation	24,701	143	1,163	3,372	2,277	3,242	6,007	3,578	4,919	-
3	Alternative Analysis	12,144	355	53	5,700	5,343	694	-	-	-	-
4 Engineering											
	15% Preliminary Engineering	70,741	249	-	3,000	18,089	48,125	1,278	-	-	-
	30% Preliminary Engineering	152,991	-	-	-	-	-	38,433	11,657	102,901	-
5	EIR / EIS Analysis	131,642	1,020	532	7,000	28,134	68,728	26,229	-	-	-
6	Station Area Planning	4,193	-	-	1,330	2,294	570	-	-	-	-
7	Draft & Final EIR/EIS	34,551	-	-	-	1,290	9,306	23,955	-	-	-
8	Certification of EIR/EIS & ROD	60,947	-	-	-	-	30	12,153	37,308	11,456	-
9	ROW EIR/EIS Process	5,446	-	-	-	-	42	5,404	-	-	-
10	ROW Activities	117,541	-	-	-	-	-	28,032	53,395	36,114	-
ODC	ODCs	-	-	-	-	-	-	-	-	-	-
	Totals	652,914	2,177	1,892	21,602	61,211	137,012	149,297	115,363	164,360	-
	Actual / Forecast	Total	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
1	Project Management	35,461	410	145	785	2,953	6,276	7,739	8,184	8,970	-
2	Public / Agency Participation	25,799	143	1,163	3,082	3,063	3,242	6,277	3,911	4,919	-
3	Alternative Analysis	16,594	355	53	4,287	11,206	694	-	-	-	-
4 Engineering											
	15% Preliminary Engineering	62,837	249	-	271	12,914	48,125	1,278	-	-	-
	30% Preliminary Engineering	143,708	-	-	-	-	-	32,036	8,771	102,901	-
5	EIR / EIS Analysis	137,986	1,020	532	1,743	33,768	68,728	32,197	-	-	-
6	Station Area Planning	3,093	-	-	552	1,972	570	-	-	-	-
7	Draft & Final EIR/EIS	41,749	-	-	-	-	9,306	32,444	-	-	-
8	Certification of EIR/EIS & ROD	57,500	-	-	-	-	30	7,451	38,563	11,456	-
9	ROW EIR/EIS Process	5,446	-	-	-	-	42	5,404	-	-	-
10	ROW Activities	121,328	-	-	-	-	-	28,032	57,182	36,114	-
ODC	ODCs	-	-	-	-	-	-	-	-	-	-
	Monthly Totals	651,502	2,177	1,892	10,719	65,874	137,012	152,856	116,612	164,360	-
	Cumulative Totals		2,177	4,069	14,788	80,663	217,675	370,530	487,142	651,502	

Cost Summary		FY 2006-2014									
DOLLARS											
Budgeted	Total	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
1 Project Management	\$5,695,744	\$96,458	\$35,642	\$166,087	\$526,999	\$1,021,639	\$1,156,364	\$1,334,034	\$1,358,521	\$0	\$0
2 Public / Agency Participation	\$3,043,022	\$29,776	\$188,260	\$341,001	\$366,931	\$355,898	\$861,211	\$368,893	\$531,053	\$0	\$0
3 Alternative Analysis	\$2,079,159	\$33,819	\$8,395	\$522,722	\$1,450,484	\$63,739	\$0	\$0	\$0	\$0	\$0
4 Engineering											
15% Preliminary Engineering	\$8,210,722	\$51,166	\$0	\$60,393	\$1,858,126	\$6,051,827	\$189,210	\$0	\$0	\$0	\$0
30% Preliminary Engineering	\$21,311,203	\$0	\$0	\$0	\$0	\$0	\$4,863,206	\$1,688,139	\$14,759,858	\$0	\$0
5 EIR / EIS Analysis	\$16,223,046	\$103,203	\$84,576	\$208,702	\$4,382,677	\$7,915,585	\$3,528,303	\$0	\$0	\$0	\$0
6 Station Area Planning	\$488,467	\$0	\$0	\$78,660	\$321,976	\$87,831	\$0	\$0	\$0	\$0	\$0
7 Draft & Final EIR/EIS	\$4,219,725	\$0	\$0	\$0	\$0	\$956,964	\$3,262,761	\$0	\$0	\$0	\$0
8 Certification of EIR/EIS & ROD	\$6,634,278	\$0	\$0	\$0	\$0	\$7,954	\$894,745	\$4,404,729	\$1,326,850	\$0	\$0
9 ROW Effort EIR/EIS Process	\$509,645	\$0	\$0	\$0	\$0	\$10,598	\$499,047	\$0	\$0	\$0	\$0
10 ROW Activities	\$12,367,583	\$0	\$0	\$0	\$0	\$0	\$3,237,325	\$5,500,000	\$3,630,258	\$0	\$0
ODC ODCs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Totals	\$80,782,594	\$314,421	\$316,872	\$1,377,565	\$8,907,194	\$16,472,035	\$18,492,172	\$13,295,795	\$21,606,540	\$0	\$0
Actual / Forecast	Total	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
1 Project Management	\$5,567,301	\$96,458	\$35,642	\$166,087	\$526,999	\$1,021,639	\$1,194,052	\$1,167,903	\$1,358,521	\$0	\$0
2 Public / Agency Participation	\$3,119,481	\$29,776	\$188,260	\$341,001	\$366,931	\$355,898	\$946,072	\$360,491	\$531,053	\$0	\$0
3 Alternative Analysis	\$2,079,159	\$33,820	\$8,395	\$522,722	\$1,450,484	\$63,739	\$0	\$0	\$0	\$0	\$0
4 Engineering											
15% Preliminary Engineering	\$8,204,724	\$51,167	\$0	\$60,393	\$1,858,126	\$6,051,827	\$183,210	\$0	\$0	\$0	\$0
30% Preliminary Engineering	\$20,504,189	\$0	\$0	\$0	\$0	\$0	\$4,488,969	\$1,255,362	\$14,759,858	\$0	\$0
5 EIR / EIS Analysis	\$16,207,245	\$103,203	\$84,576	\$208,702	\$4,382,677	\$7,915,585	\$3,512,502	\$0	\$0	\$0	\$0
6 Station Area Planning	\$488,467	\$0	\$0	\$78,660	\$321,976	\$87,831	\$0	\$0	\$0	\$0	\$0
7 Draft & Final EIR/EIS	\$4,444,646	\$0	\$0	\$0	\$0	\$956,964	\$3,487,682	\$0	\$0	\$0	\$0
8 Certification of EIR/EIS & ROD	\$6,565,416	\$0	\$0	\$0	\$0	\$7,954	\$838,286	\$4,392,326	\$1,326,850	\$0	\$0
9 ROW EIR/EIS Process	\$509,645	\$0	\$0	\$0	\$0	\$10,598	\$499,047	\$0	\$0	\$0	\$0
10 ROW Activities	\$12,348,189	\$0	\$0	\$0	\$0	\$0	\$3,237,325	\$5,480,606	\$3,630,258	\$0	\$0
ODC ODCs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Monthly Totals	\$80,038,462	\$314,423	\$316,872	\$1,377,565	\$8,907,194	\$16,472,035	\$18,387,145	\$12,656,688	\$21,606,540	\$0	\$0
Cumulative Totals		\$314,423	\$631,295	\$2,008,860	\$10,916,054	\$27,388,089	\$45,775,234	\$58,431,922	\$80,038,462		
Italics = Forecast											

Physical Percent Complete - Program Total* (Actual/Forecast)										
		2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
1	Project Management	2%	2%	5%	15%	33%	55%	76%	100%	100%
2	Public / Agency Participation	1%	7%	18%	30%	41%	71%	83%	100%	100%
3	Alternative Analysis	2%	2%	27%	97%	100%	100%	100%	100%	100%
4	Engineering									
	15% Preliminary Engineering	1%	1%	1%	24%	98%	100%	100%	100%	100%
	30% Preliminary Engineering	0%	0%	0%	0%	0%	22%	28%	100%	100%
5	EIR / EIS Analysis	1%	1%	2%	29%	78%	100%	100%	100%	100%
6	Station Area Planning	0%	0%	16%	82%	100%	100%	100%	100%	100%
7	Draft & Final EIR/EIS	0%	0%	0%	0%	22%	100%	100%	100%	100%
8	Certification of EIR/EIS & ROD	0%	0%	0%	0%	0%	13%	80%	100%	100%
9	ROW Effort EIR/EIS Process	0%	0%	0%	0%	2%	100%	100%	100%	100%
10	ROW Activities	0%	0%	0%	0%	0%	26%	71%	100%	100%
	TOTAL Annual PROGRESS	0%	1%	3%	14%	34%	57%	73%	100%	100%
*Physical Percent Complete = Actual Cost / (Actual Cost + Estimate Cost to Completion)										



California High Speed Rail Authority

Cost Performance Report
April 2013

Merced-Fresno

Planned Progress 71.1%
Actual Progress 70.6%

AECOM

Dollar amounts in thousands

WBS	Task	Total Labor Budget* (BAC)	Planned (PV)	Actual Cost (AC)	Earned (EV)	Forecast (ETC)	Total Cost (EAC)	CPI	SPI
1	Project Management	\$5,696	\$4,168	\$4,039	\$3,984	\$1,528	\$5,567	0.99	0.96
2	Public / Agency Participation	\$3,043	\$2,451	\$2,528	\$2,526	\$582	\$3,119	1.00	1.03
3	Project Definition	\$2,079	\$2,079	\$2,079	\$2,079	\$0	\$2,079	1.00	1.00
4	Preliminary Engineering	\$29,522	\$14,592	\$13,779	\$14,029	\$14,930	\$28,709	1.02	0.96
4.1	Infrastructure 15%	\$8,211	\$8,211	\$8,205	\$8,211	\$0	\$8,205	1.00	1.00
4.11	Infrastructure 30%	\$21,311	\$6,381	\$5,574	\$5,818	\$14,930	\$20,504	1.04	0.91
5	ERREIS Analysis	\$16,223	\$16,223	\$16,207	\$16,229	\$0	\$16,207	1.00	1.00
6	Station Area Planning	\$488	\$488	\$488	\$489	\$0	\$488	1.00	1.00
7	Draft and Final ERREIS	\$4,220	\$4,220	\$4,445	\$4,221	\$0	\$4,445	0.95	1.00
8	Certification of ERREIS and ROD	\$6,634	\$4,627	\$4,558	\$3,914	\$2,007	\$6,565	0.86	0.85
9	ROW/ERREIS Process	\$510	\$510	\$510	\$510	\$0	\$510	1.00	1.00
10	ROW Activities	\$12,368	\$8,100	\$8,081	\$9,028	\$4,268	\$12,348	1.12	1.11
ODC	Other Direct Costs *	\$0	\$0	\$0	\$0	\$0	\$0	NA	NA
Total		\$80,783	\$57,458	\$56,714	\$57,007	\$23,324	\$80,038	1.01	0.99

* Total Labor Budget - is the planned cost of all work, less Other Direct Costs (ODCs).

Current Cost Variance (CV) to Date (EV - AC):

\$293

Percent under (+) or over (-) budget

0.5%

UNDER BUDGET

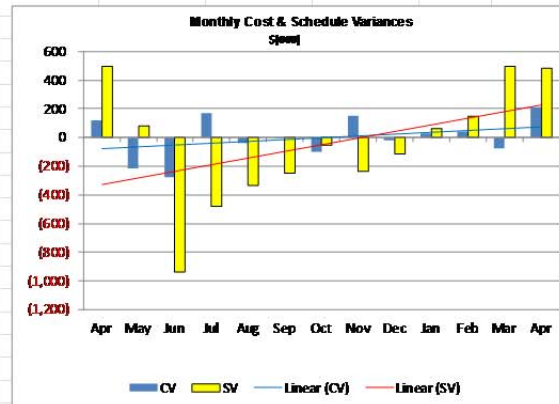
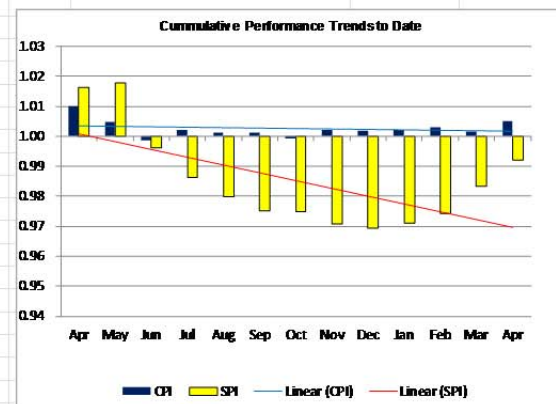
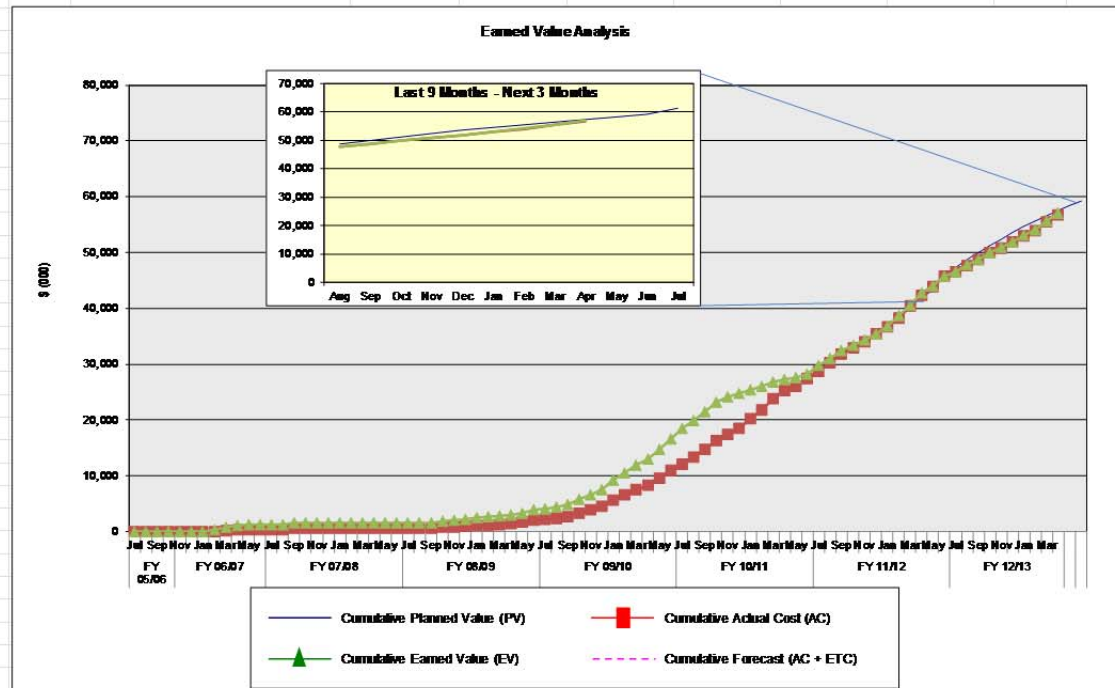
Current Schedule Variance (SV) to Date (EV - PV):

(\$490)

Percent ahead (+) or behind (-) schedule

-0.8%

BEHIND SCHEDULE



Task 9. Rights-of-Way Effort to Support EIR/EIS Process

- a) Completed the ROW plans for the December 2011 package submittal.

Task 10. Rights-of-Way Activities this period

AECOM

- a) Continued coordination with CH2M Hill and AECOM Engineering on design ROW requirements. Continual updates to ROW deliverables such as appraisal maps, displays and exhibits.
- b) Review appraisal reports to ensure appraisal basis matches appraisal map and legal description. Main concern is consistency between the three key documents (appraisal report, appraisal map, and legals) due to recent design changes. This created unanticipated out of scope work.
- c) Continued appraisal map development from future Veterans Blvd. to Avenue 7. Updated appraisal maps incorporating feedback from PMT/Authority on City of Fresno work limits versus the CHSRA work limits. Additional appraisal map rework due to Golden State Blvd. (GSB) revision.
- d) Continued appraisal-map development from Ave. 7 to Ave. 17. Rework of appraisal map due to change in appraisal-map approach and engineering ROW refinements.
- e) Continued to process information requests and pass information along to various ROW Team members (i.e., BRI, O'Dell, Paragon Partners, etc.).
- f) Continued updating the parcel specific list and tracking tool. Includes Paragon Partners Acquisition Plan assistance and Review.
- g) Continued response to BRI Appraiser for RFI Support.
- h) Continued coordination with cultural resources to provide joint access to parcels during the ROW activity.
- i) Continued performing Segment 1 ISA Phase 1 supplemental work due to "parent/child" parcels. Continued ISA Phase 2 parcel field investigation/sampling work in Segment 1. Sent PTE for Segment 2 Phase 2.
- j) Continued Appraisal Management activities. Includes monthly ROW meetings, internal ROW Team meetings, and others.
- k) Continued Mitigation Lands Coordination efforts for 4 EA proposed mitigation sites.

CH2M Hill Effort

- a) Participated in Weekly PTE Status Meetings.
- b) Coordinated PTE tracking and activities with Authority/PMT/RC.
- c) Participated in planning to increase PTE in support of pre-construction activities.
- d) Produced PTE-related status products (spreadsheets and maps).

O'Dell Effort

O'Dell Engineering continued the right-of-way mapping and surveying of the Merced-to-Fresno section.

a) For the Clinton Avenue-to-Avenue 7 portion (Segment 1), our work this period included:

- Provided continued support of the appraisal mapping process.
- Continued work on corridor control and boundary Record of Survey.
- Continued surveying of boundary and control points.
- Integrated revised right-of-way alignment into base drawings.
- Prepared 12 additional property boundaries.

b) For the Avenue 7-to-Avenue 17 section (Segment 2) our work included:

- Continued field surveys and research of private properties affected by the alignment.
- Prepared staking requested by the appraisal team for 3 properties.
- Integrated revised right-of-way alignment into base drawings.
- Coordinated staking and appraisal team reports.
- Prepared Legal Descriptions for the partial takes and TCEs.
- Boundary research: MF-20-0944.

BRI Effort

- a) To date BRI has delivered 97 appraisals to AECOM.
- b) Completed 149 draft appraisal reports for review.
- c) Inspected a total of 251 parcels.
- d) Sent out 264 NODA letters.
- e) Continued PTE efforts for Phase 2 & bio and cultural inspections.
- f) Began Memorandum of Appraisal Update (MAU) for 90 parcels and submitted 6.

BRI Program Management Effort

- a) Continued development of appraisal status tracking/management procedures and tools to handle the over 222 parcels. SharePoint-based status tools were rolled out and shared with RC and Authority staff.
- b) Continued to be available to attend special meetings and conference calls requested by Authority and RC staff with property owners, local elected officials, and staff.
 - Attended Permit to Enter weekly meeting.
- c) Continued coordinating right-of-way issues with City of Fresno and Fresno Economic Development Corporation.
- d) Continued to provide support of "Property Liaison" services, including phone calls to and from property owners, their agents, and other 3rd parties.
- e) Assist the Authority in developing transfer process of appraisals to acquisition team.

ROW Outreach and Communications

- a) Responded to ROW related inquiries and coordinated with project and Authority ROW staff to address questions or concerns.
- b) Participated in weekly Environmental Fieldwork: Permission to Enter conference calls (4/4, 4/11, 4/18, 4/25).
- c) Attended JV/AECOM Joint ROW meeting (4/3).
- d) Participated in meeting regarding mitigation site environmental review (4/5).

CirclePoint

- a) Responded to information requests of property owners along the alignment that are impacted by the project and coordinated outreach needs with the Authority and BRI.
- b) Processed incoming comments and information requests related to ROW via CommentSense.
- c) Responded to info requests related to the Final EIR/EIS and ROW concerns.
- d) Compiled historical data of previous communications with property owners in the initial construction segment.

Planned Activities Next Period

Task 9 Rights-of-Way Effort to Support EIR/EIS Process

No activity.

Task 10 Rights-of-Way Activities

AECOM:

- a) Continue Segment 1 ISA Phase 1 supplemental to “parent/child” parcels and ISA Phase 2 for Segment 2.
- b) Finalize appraisal-map development from future Veterans Blvd. to Avenue 7 for BRI appraisal activity. Incorporation of change in approach for appraisal maps. Rework. Continue resolving easement from future Veterans Blvd. to Avenue 7.
- c) Continue appraisal-map re-development from Ave. 7 to Ave. 17 for BRI appraisal activity Rework.
- d) Continue support and development for GSB realignment work.
- e) Continue field-appraisal support activity (RFI) to BRI specialty appraisers for Segment 1. Continue supporting NODA appraisal activities. Tasks include tracking each parcel relative to ROW appraisal task and preparing exhibits and specific appraisal maps to be used by the appraisers.
- f) Revise Appraisal maps per team-member and stakeholder comments. Continue development of DRAFT Record Map.
- g) Continue Interdisciplinary coordination of roadway, environmental footprints, and ROW Team. Includes coordination meetings, focus meetings, and other similar activities.
- h) Continue Appraisal and Cultural coordination, such as cultural site review.
- i) Continue attending ROW meetings with PMT, Authority, and ROW Team.

- j) Receive closure from CHSRA to send appraisal notice for the remaining impacted parcels from Ashlan Avenue to Avenue 7. Continue working with property owners and key stakeholders on key issues.
- k) Continue Appraisal Management.
- l) Continue to support environmental team on site-mitigation activities.
- m) Continue with mitigation ROW parcels.
- n) Continue with UPRR ROW parcels.

CH2M Hill Effort

- a) Continue to assist in design refinement options in support of ROW team.
- b) Continue to manage parcel acquisition spreadsheet for design changes.
- c) Continue to support preparation of a ROW access plan for cultural and biological surveys.

O'Dell Effort

- a) Topographic surveys as needed for the design team.
- b) Continue the Legal Descriptions for the partial takes and TCEs in Segment 1 and 2.
- c) Staking of fee-take areas for appraisal team and affected property owners, Segments 1 and 2.
- d) Continue work on the Segment 1 Records of Survey.
- e) Final review of Appraisal Maps in Segments 1 and 2.

BRI Appraisal Effort

- a) Continue Inspections in Segment 2.
- b) Complete draft appraisals for 4 environmental mitigation sites.
- c) Send out Future Veterans Blvd. rescission letters
- d) Incorporate Segment 2 into the ROW relocation plan and deliver by May 31.
- e) Continue PTE efforts for cultural and biological reports
- f) Begin Delivery on Segment 2 appraisals.
- g) Begin Delivery on UPRR appraisals.
- h) Continue updates on appraisals.
- i) Continue delivery of MAUs.

BRI Program Management Effort

- a) Continue PTE efforts for cultural and biological reports.
- b) Respond to requests from the Authority to attend property-owner and stakeholder meetings.
- c) Transition the Property Liaison efforts to the Authority.
- d) Continue supporting Authority on Program Management. Includes establishing ROW processes, procedures, protocols, etc.

ROW Outreach and Communications

- Respond to ROW related inquiries and coordinate with project and Authority ROW staff to address questions or concerns.
- Inform key stakeholders of appraisal and environmental related activities.
- Participate in weekly Environmental Fieldwork: Permission to Enter conference calls (5/2, 5/9, 5/16, 5/23, 5/30).
- Attend JV/AECOM Joint ROW meeting (5/1).

CirclePoint

- Support ROW outreach activities.
- Respond to information requests of property owners along the alignment that are impacted by the project and coordinate outreach needs with the Authority and the BRI team.

Schedule and work product progress

