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SUBMITTED BY ELECTRONIC DELIVERY

May 27, 2020

Assembly Transportation Committee
California State Capitol
10th & L Streets
Sacramento, CA 95814

Re: Committee Hearing on California High Speed Rail Authority 2020
Business Plan.

Dear Chair Frazier and Committee Members:

I am writing today on behalf of former State Senate Member and retired Judge Quentin L. Kopp, as well as the Community Coalition on High-Speed Rail, and Transportation Solutions Defense and Education Fund, both public benefit nonprofit entities, to comment on the California High-Speed Rail Authority's 2020 Business Plan.

Before going further, I would like to explain my past experience with the Authority and its plans. I have been involved with California's high-speed rail project since 2003 and have represented numerous plaintiffs, including public entities, nonprofit public benefit groups, citizens' groups, and individual Californians in multiple rounds of litigation against the Authority. Much of that litigation has concerned the Authority's repeated and continuing efforts to sidestep the limitations placed on the Authority by the Legislature and the voters on the use of bond funds provided by Proposition 1A. That November 2008 general obligation bond measure provided \$9.95 billion to help plan and build a statewide high-speed rail system.

The bond measure included many limitations on the Authority's use of those funds. The limitations were intended to prevent the Authority from squandering the funds on poorly planned and politically motivated "boondoggle" projects. Unfortunately, the voters' intent has been repeatedly stymied by the Authority's machinations.

The 2020 Business Plan represents the Authority's latest attempt to spend down the remaining bond funds. Unfortunately, the Authority's current plans will not provide the kind of efficient, cost-effective high-speed passenger train service that the voters expected to result from the expenditure of bond funds. Fortunately, the Legislature still has the power to rein in the Authority's ill-conceived plans.

The 2020 Business Plan calls for the Authority to use all the remaining bond funds, as well as vast amounts of revenue from the "cap and trade" auction proceeds – intended to assist in reducing California's greenhouse gas emissions – towards building out a high-speed rail segment extending from Merced to Bakersfield. Even then, it is unclear whether there will be sufficient funds to complete a working segment. If not, all Californians will have to show for the expenditure of close to \$20 billion of state and federal funds will be a huge monument to mismanagement and bad decisions.

The icing on the cake, as it were, is that the Authority has been forced to acknowledge that even if the segment is completed, its ridership and operating costs will be such as to require a large operating subsidy – something the bond measure specifically prohibits. The Authority proposes to sidestep this prohibition by handing off the actual operation of the money-losing segment to other entities. At the moment, the entities of choice appear to be the the San Joaquin Joint Powers Authority and the San Joaquin Regional Rail Commission. The Authority apparently believes that this legerdemain will make the subsidized service legal. It will not.

The relevant provision of Proposition 1A is contained in Streets and Highways Code Section 2704.08(d), which requires that the Authority show, through a report prepared by an impartial outside expert, that, “the planned passenger train service to be provided by the authority, *or pursuant to its authority*, will not require operating subsidy.” [emphasis added] The reference to “under its authority” indicates that even in 2008 when the measure was written, the Legislature was concerned about the Authority attempting just the kind of subterfuge currently being proposed.

The legislation that created the High-Speed Rail Authority, Public Utilities Code Section 185020 et seq., under Section 185032, states as follows:

Upon an appropriation in the Budget Act for that purpose, the authority shall prepare a plan for the construction and operation of a high-speed train network for the state, consistent with and continuing the work of the Intercity High-Speed Rail Commission conducted prior to January 1, 1997. The plan shall include an appropriate network of conventional intercity passenger rail service and shall be coordinated with existing and planned commuter and urban rail systems.

(a) The authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 125 miles per hour in this state is exclusively granted to the authority.
[emphasis added]

The Legislature, in writing legislation, is presumed to be aware of existing law. When it called, in Proposition 1A, for no subsidy to be allowed for operation of high-speed passenger rail service by the Authority or under its authority, it presumably knew that *any* high-speed passenger rail service operating in California, regardless of the nominal operator, would need to be operated under the authority of the High-Speed Rail Authority. Consequently, simply handing off operation of the service to another entity does not eliminate the strictures of Section 2704.08(d).

My clients hope and expect that this committee, and the Legislature, will make it clear to the Authority that its current business plan is noncompliant and unfundable.

Most sincerely,


Stuart M. Flashman

cc: CHSRA, Hon. Q. Kopp, CC-HSR, CCHSRA, TRANSDEF