

BRIEFING NOTE #36 — THE TOS, FUKUDA CASE — I

The Tos, Fukuda case – on February 11th, Judge Michael Kenny (who found in our favor in 2013 and effectively blocked access to PropIA bond funds) heard arguments concerning Part II, where our attorneys argued four points – the first of which is the most crucial. First, we Plaintiffs argue that Section 2704.04 (a) says that any HSR project operating under AB3034 must meet certain criteria no matter where funds come from; and this was the Legislature's intent when it separated that from Section 2706, which only addresses the way PropIA bond funds can be spent.

If we win that argument, the logical outcome is that no further federal, PropIA, Cap & Trade auction or private funds (there are none) can be used to build the system until the CA High-Speed Rail Authority's (CHSRA) can a) prove its Blended System conforms with voter-approved PropIA, b) the HSR train can go from the SF TransBay Terminal (now a Billion \$s over budget) to LA Union in 2hrs 40minutes, and c) the HSR system can operate without an operating subsidy (which none in the world do). Kenny has until mid-May to issue a ruling, but his Part I ruling came in 58 days. It is common wisdom that the loser will appeal. But Appellate Court ruled fairly quickly on Part I, so we expect to know the outcome by July. Much rides (no pun) on the outcome

The 2016 CHSRA's 2016 Business Plan (a legal document) was released last week. As expected, the Authority 'pivoted' north after the LA Times (see Report #35) showed that CHSRA had 'buried' a report from their principal consultants saying the Merced to San Fernando Initial Operating Segment (IOS South) capital costs should be increased from \$31.5Billion to \$40Billion. Predictably, the IOS North (Bakersfield-San Jose) is to cost 'only' \$20Billion.

Superficially, this looks like a win in the misinformation game. However, with the exception of the SF Chronicle most media has been skeptical of such a radical change of direction a bit more than 18months before the unspent ARRA (Stimulus Funds) grants must be returned to Congress. But the reality of the Plan's benefits is quite different. Some highlights:

1) CHSRA is committed to finishing what it has contracted for. In a 2012 report, my colleague Bill Warren and I pointed out that CHSRA only had enough funds to go from Madera to some 10-15miles north of Bakersfield. CHSRA now admits that costs have risen for the first section (CPI) and in the nearly three years since that award, has acquired only about 60% of the land needed to go those first 29miles. So, where is the money to build north of Madera coming from. Expect more delays and cost rises.

2) CHSRA's new Plan strongly hints at what their 2014 Plan said – that their construction cost estimates are only for building what is politely referred to as the 'substrate' or as our attorneys say 'a dirt mound.' They seem to be seeking private money to fund the costs of rails, electrification, train control systems (and by inference the rolling stock). They learned in October 2015 what they were told in June 2008 and September 2009 by Goldman Sachs, that no private at-risk funds will be forthcoming without (illegal) government guarantees.

3) As we demonstrated in 2013, the costs of moving highways, roads, irrigation channels, co-axial and power transmission towers for the first 29miles was more than the costs of constructing that 'dirt mound.' Further southward they additionally face ground subsidence and oil fields. So how did CHSRA lower the IOS North's capital costs – by not including those costs in the Plan. [The Plan's tables and figures say "construction" costs, but no mention is made of moving existing, fixed infrastructure.]

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page 2

4) Much is made of the new route's ability to have Central Valley (CV) residents commute to Silicon Valley (SV) jobs and SV Valley residents to find cheaper housing in the CV. But SV employees who commute from the CV aren't the highly skilled tech workers who can (barely) afford SF Bay Area's housing costs. They're lower skilled (lower paid) workers, largely in service industries. CHSRA's 2016 one-way fare (Table 3.1) between Fresno (first stop south of San Jose) and San Jose is \$63, making the annual commute cost over \$25,000. While it may be faster, they drive that for about \$14 by themselves or carpool for much less.

Conversely, the State's new water management laws are already making it difficult to build new housing in the CV – ergo home prices in the CV's existing and new housing stock will rise, pushing out the very CV people that presently commute to SV. Once again, as shown in studies of existing HSR systems, HSR ends up serving the interests of reimbursed business travelers to the detriment of the middle class and poor. [See our attached 5-year old paper on this.]

5) Miraculously, the total costs to construct between the SF TransBay Terminal and LA Union Station gets lowered from \$68Billion to \$64Billion. What happened to the extra \$9Billion the Authority's consultants told them to add to get over the Tehachapi Range or moving the fixed infrastructure ?

6) After much ballyhoo about the IOS North (2025-2028) being profitable, the technical documents show CHSRA: a) chose ridership and revenue forecasts they admit could be off by 50% or more, b) uses a European accounting system prohibited in the US, c) made NO provision for a private operator's taxes or profits in their calculations and, d) large percentages of professional and managerial workers's costs are eliminated for a first-of-its-kind project. Then the buried away finale: CHSRA's finance group thinks the “. . . the cumulative chance of breaking even over the first five years is 89%.” There is NO provision in the law AB3034 that allows for any year of operations to not break even.

In short, the new Plan is again riddled with misinformation, inconsistencies and out-right fabrication. We have begun to name the 2016 Plan “Marketing Glitz With Self-Serving Assumptions Hiding A Political Boondoggle” because that is what it is.

Conclusions – This January we found that the CA Legislature is no more willing to ask the hard questions of CHSRA than their predecessors although they held a “comprehensive” hearing that the press once again called a sham.

In the next six weeks we will be both preparing our comments on the 2016 Plan and preparing comprehensive documents that include new material from 2012-2016 just in case we are forced to go back to court. We are fortunate to have such a large team of volunteer experts and lawyers trying to stop the waste, fraud and deception. We are at our posts and will remain there.

William Grindley