



community report

October 27, 2014

HSR Litigation: It's Not Over (Not Even Close)

Here is a statement from Mike Brady, a member of the CC-HSR Board of Directors, and the lead attorney in the Tos v. Authority lawsuit that is challenging the state's ill conceived and badly managed high-speed rail project:

There is a major misperception out there that the recent Supreme Court decision, declining to review an appellate court decision in our HSR litigation, "clears the decks," and that the Authority has no further legal obstacles to overcome, and can commence construction whenever it chooses to do so. That is definitely the impression given by a number of recent news stories. However, this impression is absolutely wrong for the reasons set forth below.

The recent Supreme Court decision not to hear the case allows the appellate court decision to stand. All that the appellate court said was that the Preliminary Funding Plan, though the appellate court acknowledged it was inconsistent with Proposition 1A, was meant as a report for the Legislature only, and thus did not have to comply with Proposition 1A's restrictive provisions at that time. BUT, the appellate court also said that when the Authority seeks to sell the bonds and spend the bond money, the Authority must first go through the rigorous requirements of the Second Funding Plan contained in Proposition 1A, and must comply with all the strict provisions of Proposition 1A at that time.

The Authority cannot start construction with Proposition 1A bond funds until it has enough money in the bank to COMPLETE the so-called Initial Operating Segment, a 300-mile segment of the proposed project costing \$35 billion or more. What does the Authority actually have to spend? About \$6 billion! That is not nearly enough to comply with what Proposition 1A requires.

In addition, the Authority cannot start construction or spend Proposition 1A money until it gets all environmental clearances for the entire 300-mile Initial Operating Segment. At the present time, the Authority lacks clearances for about 180 miles of that segment! Getting the required environmental clearances could take years!

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Please Know This: WE APPRECIATE Your Support!

Since 2008, CC-HSR has been working through litigation, lobbying, and public outreach to make sure that the state's proposed High-Speed Rail project does not bring devastating impacts to the San Francisco Peninsula, or to other parts of California. Return go to our web site www.cc-hsr.org to make a donation to support our work.

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Furthermore, since the appellate court decision, evidence has surfaced from the Authority itself that the entire Southern California route, south of Bakersfield, is not workable for high-speed rail, and will have to be redone. This means that the project cannot be approved at all, and must go back to the drawing board, to see whether a viable route can be designated.

The opponents of the current project are about to go to trial on several issues that are totally unrelated to the appellate court decision and that are not affected by it. For instance, will the Authority be able to transport a passenger from LA to San Francisco in 2 hours and 40 minutes, as specified in Proposition 1A? Will a subsidy be required for operating costs? Does the "blended system" itself violate the promise of Proposition 1A that we will get a genuine high-speed rail system?

If we win on any of these issues, and we think our arguments are good, this project will be stopped dead in its tracks! We are in this fight for the duration. HSR faces insurmountable obstacles if the courts, as we expect, uphold the strict restrictions of Proposition 1A, which the voters enacted to protect themselves against bad fiscal and project management.

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