



The Real Impact of Project Delays

Opposition to high-speed rail bonds puts consulting firms on hold

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No public project in recent history has been more scrutinized than the State of California's attempt to build a high-speed rail line. The state agency charged with overseeing the construction of the line is the California High-Speed Rail Authority (CHSRA). The CHSRA was formed in 1996 and was tasked with preparing a plan and design for the construction of a system to connect the state's major metropolitan areas. The proposed system runs from San Francisco to the Los Angeles basin in under three hours at speeds of over 200 miles per hour. The line will eventually extend to Sacramento and San Diego, totaling 800 miles with up to 24 train stations. However, recent litigation connected to the project has had a decidedly detrimental effect on many right of way firms hired at the onset of the project.

The CHSRA has approximately 370 parcels that it needs to buy or acquire through eminent domain just for the first 28 miles of construction, from Merced to Fresno. The estimated total cost for this initial segment is between \$1 billion and \$1.5 billion. In February 2013, the CHSRA awarded four right of way service contracts for up to \$8.5 million per firm for the segment. The firms were retained to provide appraisals, acquisition, relocation assistance and property management. Thus far, the CHSRA has proceeded cautiously in acquiring right of way for the project, in no small part because of the uncertainty created by several lawsuits challenging the CHSRA's project funding or lack thereof. One of these cases, *Tos v. California High-Speed Rail Authority*, is a project-funding opposition lawsuit challenging the issuance of high-speed rail bonds.



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The Facts

In November 2008, Proposition 1A was approved by the state's voters, making it the nation's first ever voter-approved financing mechanism for high-speed rail. The proposition included \$9 billion in state-issued bonds to fund the project. Additionally, the federal government set aside approximately \$3 billion through the 2009 federal stimulus. Planning for the new rail service required that a comprehensive analysis of the significant right of way requirements be included.

Proposition 1A, also known as the Bond Act, authorized the issuance and sale of \$9.95 billion in general obligation bonds and set forth specific criteria for the bond proceeds as well as for the design and capacity of the rail system. One such requirement prior to a CHSRA bond appropriation request was the issuance of a "preliminary funding plan." This funding plan is intended to provide guidance to the state legislature in acting on the CHSRA's appropriation request. The CHSRA prepared and certified a preliminary funding plan for the state legislature, followed by opposition and legal challenges.

The Legal Issues

There were two issues presented to and answered by the court in the Tos case. First, a group of property owners filed a lawsuit seeking to stop the CHSRA from requesting the issuance of Proposition 1A bonds citing a deficient preliminary funding plan that violated the Bond Act. The appellate court ultimately decided that the plan was not inadequate nor in violation of the act. The terms of Proposition 1A gave the court no authority to interfere with that exercise of judgment.

Second, the CHSRA filed a validation action with the court to obtain a judgment that affirmatively validated the bonds so they could be sold on the capital markets. The court found that the CHSRA had the authority under the law to issue and sell the bond and notes, and to issue and sell refunding bonds to refinance previously issued bonds.

Although the scope of the decision was decidedly narrow, the court also recognized that substantial legal questions remain to be answered as to whether the high-speed rail project the CHSRA seeks to build is in fact the project approved by the voters in 2008. Finally, the court noted that there are substantial financial and environmental

questions remaining to be answered by the CHSRA, including a “final funding plan” that the voters required for each corridor or usable segment of the project.

Right of Way Notes

Project delays and impediments to the right of way acquisition process, whether caused by litigation or other reasons, are not uncommon. However, there will continue to be direct and indirect impacts from the project delays caused by the ongoing CHSRA litigation.

Directly impacted are those right of way professionals that were asked for firm time commitments in 2011, when the CHSRA started the formal process of notifying the right of way community that the CHSRA would be releasing a request for proposals for the right of way services needed. All interested right of way consulting companies were required to identify the individual right of way professionals that would commit to being available for right of way functional areas. At the time, many of these professionals chose this commitment over other potential work because the original CHSRA estimate identified that the project would require the acquisition of up to 1,100 parcels, and because it was anticipated that right of way acquisitions would begin near

the end of 2011 or early 2012. But since being retained, the right of way firms have mostly been limited to precondemnation appraisal assignments. The other right of way professional areas have been sparsely utilized.

Right of way firms have also been indirectly impacted by the project delays. Most consultant-based right of way firms are medium to small businesses. Since being retained, the right of way firms have incurred ongoing fixed expenses for underutilized office facilities and administrative staff, in addition to the cost of maintaining business working capital to cover accounts receivables from the work completed for CHSRA.

The ongoing and anticipated lawsuits challenging CHSRA’s project have slowed access to project funding for the right of way acquisition processes, and it is likely to remain problematic for the individual professionals and their right of way firms. ☹

References

California High-Speed Rail Authority et al. v. Superior Court (July 31, 2014, 3rd App. Dist.) Case # C075668, p.45; <http://www.courts.ca.gov/opinions/documents/C075668.PDF>

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