CALIFORNIA HIGH-SPEED TRAIN

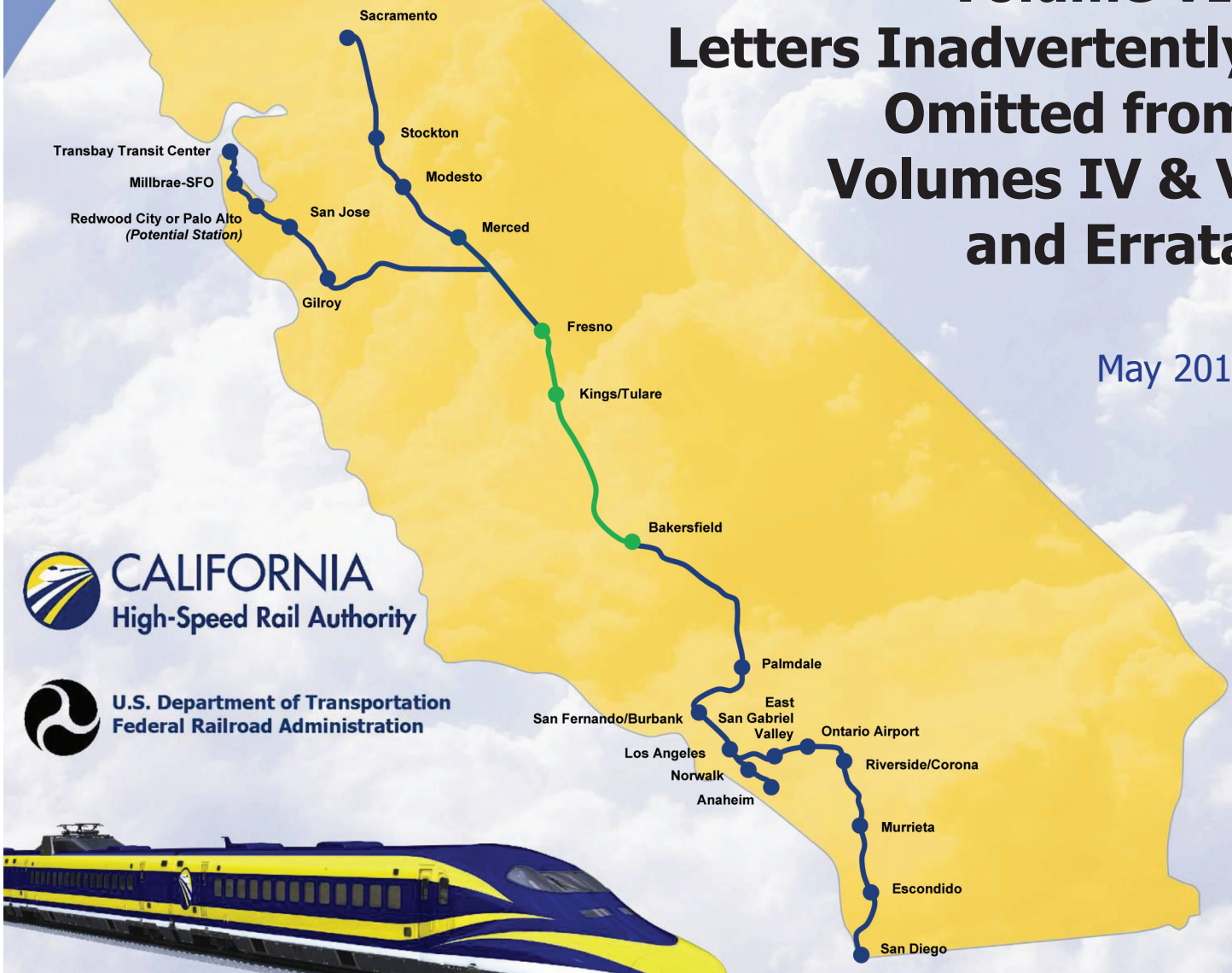
Project Environmental Impact Report / Environmental Impact Statement

Final EIR/EIS

Fresno to Bakersfield Section

Volume VI: Letters Inadvertently Omitted from Volumes IV & V and Errata

May 2014



CALIFORNIA High-Speed Rail Authority

U.S. Department of Transportation
Federal Railroad Administration

Final Environmental Impact Report / Environmental Impact Statement

and

Section 4(f) Evaluation

and

Draft General Conformity Statement Fresno to Bakersfield Section

VOLUME VI: LETTERS INADVERTENTLY OMITTED FROM VOLUMES IV & V AND ERRATA

Prepared by:
California High-Speed Rail Authority
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Sacramento, CA 95814
Contact: Mark McLoughlin
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1200 New Jersey Avenue SE MS-20
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Contact: Mr. David Valenstein
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Cooperating Agencies:
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916-557-6746

Surface Transportation Board
395 E Street SW
Washington, DC 20423
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202-245-0294

May 2014

California High-Speed Rail Authority and Federal Railroad Administration. 2014. *Fresno to Bakersfield Section California High-Speed Train (HST) Final Project Environmental Impact Report / Environmental Impact Statement (EIR/EIS)*. Volume VI: Letters Inadvertently Omitted from Volumes IV & V and Errata. Sacramento, CA, and Washington, DC.

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[1] Letters with responses were sent to the commenting agencies by overnight mail on April 24, 2014 for delivery on April 25, 2014. The remaining letters with responses were sent to commenters by overnight mail on April 29, 2014 for delivery on April 30, 2014.

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Chapter 53. Introduction

This Volume VI contains public comments on the 2011 Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and the 2012 Revised Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS) for the Fresno to Bakersfield Section of the High-Speed Train project and responses that were inadvertently omitted from Volumes IV and V of the Final EIR/EIS. Responses to comments included in this Volume VI reference standard responses that address frequently raised issues. These standard responses are included in Chapter 16 of Volume IV and Chapter 34 of Volume V.

This Volume also contains the Errata that are herewith corrected in the Final EIR/EIS for the Fresno to Bakersfield Section of the California High-Speed Train System.

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Submission L001 (R.L. Schafer, Tule River Association, October 12, 2011)

TULE RIVER ASSOCIATION

SECRETARY-WATERMASTER:
RICHARD L. SCHAFER
MEMBER AGENCIES:
PIONEER WATER COMPANY
VANDALIA IRRIGATION DISTRICT
PORTERVILLE IRRIGATION DISTRICT
LOWER TULE RIVER IRRIGATION DISTRICT
DOWNSTREAM KAWEAH & TULE RIVERS ASSOCIATION

RECEIVED
10-14-11P04:30 RCVD

October 12, 2011

California High Speed Rail Authority
770 "L" Street, Suite 800
Sacramento, CA 95814

Re: California High Speed Train Project, Fresno to Bakersfield Section
Draft Environmental Impact Report

Dear Sir or Madam:

L001-1

The Tule River Association, composed of the parties with water rights on the Tule River at and below Success Dam, was formed in 1965 subsequent to the completion of Success Dam in 1961, and is responsible for the administration of the Tule River waters from Success Dam to the Kings County line.

In review of the Draft Fresno to Bakersfield Section, Hydrology and Water Quality Technical Report, the source of the Tule River flow data set forth in Table 4.2-7, page 4-20, provides concern to the reader as the record of the Tule River below Success Dam California commenced in October 1960 and is available through Water Year 2010 with prior year data of record to 1953. Of concern is the maximum cfs. flows identified in said Table 4.2-7, which do not represent actual conditions of the past 50 years.

Although we have only conducted minimal review of the extensive Environmental Impact Report/Environmental Impact Statement, due to the time constraints provided to readers, we are unable to identify details of the proposed bridge crossing of the Tule River, other than set forth in Table 4.2-3 that identifies a 150' bridge. We request that should the High Speed Train become a reality, that the design team for the bridge crossing expend time with the local water managers for review of hydrology before design of the bridge and for understanding of the consequences of the High Speed Train facilities on the flood plain.

It appears the Tule River Subbasin, identified as a groundwater basin of 467,000 acres, covers channels other than the Tule River, such as Deer Creek and White River, for which we have similar comments as set forth herein above for the Tule River.

Very truly yours,

R. L. Schafer
Watermaster

RLS/mep

cc: TRA Directors

Response to Submission L001 (R.L. Schafer, Tule River Association, October 12, 2011)

L001-1

Table 4.2-7 in the revised Hydrology and Water Quality Technical Report was updated to include the period of record data (i.e., streamflow data from 1960-1990) available from the U.S. Geological Survey. Several of the monthly maximums were associated with the winter of 1983, and additional data from the last 20 years may show an increase in the maximum flow during very wet years. The design for bridges across the major streams such as the Tule River will be finalized as part of the design build project. The updated Hydrology and Water Quality Technical Report, Table 4.2-3, shows a revised value of 300 feet for the length of the Tule River crossing. This could be a bridge or an aerial structure. The final designs for the bridge will be designed to pass the 100-year event without increasing the water level above the level for existing conditions. The Tule River groundwater basin area is as defined by the Cailfornia Department of Water Resources (DWR). Its boundaries do not necessarily follow the boundaries of the Tule River watershed boundary.

Submission L002 (Michael Nordstrom, Tulare Lake Basin Water Storage District, et al. (Atty. for), Law Offices of Michael N. Nordstrom, October 13, 2011)

LAW OFFICES OF
MICHAEL N. NORDSTROM

TELEPHONE
(559) 584-3131
TELECOPIER
(559) 584-3132

222 W. LACEY BLVD.
HANFORD, CALIFORNIA
93230

RECEIVED
10-14-11P04:30 RCVD

October 12, 2011

California High Speed Rail Authority
770 "L" Street, Suite 800
Sacramento, CA 95814

RE: California High Speed Train Project
Fresno to Bakersfield Section

Dear Authority Members:

Please find enclosed the original letters that were previously emailed to you by Mr. Nordstrom via your website. If you should have any questions regarding the enclosed letters, please contact our office at (559) 584-3131.

Very truly yours,

LAW OFFICES OF MICHAEL N. NORDSTROM

By _____
Carol Weisser
Legal Secretary to Michael N. Nordstrom

LAW OFFICES OF
MICHAEL N. NORDSTROM

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222 W. LACEY BLVD.
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93230

October 11, 2011

California High Speed Rail Authority
770 "L" Street, Suite 800
Sacramento, CA 95814

RE: California High Speed Train Project
Fresno to Bakersfield Section

Dear Authority Members:

I am writing on behalf of the Tulare Lake Basin Water Storage District regarding deficiencies in the Fresno to Bakersfield section of the High Speed Train Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) regarding the operation, maintenance and use of canal and ditch systems either owned or involved with. The District has reviewed, supports, endorses and joins in the comments submitted by the Kings River Conservation District (KRCD) and Kings County Water District (KCWD). In addition to the comments submitted by KRCD and KCWD, we offer the following additional comments:

L002-1

1. The EIR/EIS fails to address the additional time and expense for District personnel having to drive several hundreds of additional miles each year to operate the canal systems due to the severance and interference the alignment of the High Speed Rail will cause. This impact will not be limited to the ditch tender trucks, but also to spray equipment, dump trucks, road graders, tractors and other ditch maintenance equipment. An analysis and assessment of these costs should be made on a ditch-by-ditch basis so that appropriate severance damages may be calculated.

L002-2

2. The EIR/EIS fails to assess the air impacts due to the additional vehicular and equipment traffic caused the aforementioned severance and interference with ditch operations. An analysis of these impacts should be included.

Submission L002 (Michael Nordstrom, Tulare Lake Basin Water Storage District, et al. (Atty. for), Law Offices of Michael N. Nordstrom, October 13, 2011) - Continued

L002-3

3. The EIR/EIS fails to address the impacts of delayed response times and the resulting damages related to ditch breaks and other emergencies on the canals and ditches. The EIR/EIS should address how the restricted access in emergencies should be mitigated.

L002-4

4. The EIR/EIS fails to address the additional costs and the manner in which repairs and modifications to the canal facilities at the rail crossings will be handled.

Should you have any questions of which to discuss the concerns and issues of these agencies, please feel free to contact me at this office.

Very truly yours,

LAW OFFICES OF MICHAEL N. NORDSTROM

MICHAEL N. NORDSTROM, Attorney at Law

cc: Mark Gilkey, Tulare Lake Basin Water Storage District

clients/high speed rail/10-11-11 ltr to CA High Speed Rail - TLBWSD

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93230

October 11, 2011

California High Speed Rail Authority
770 "L" Street, Suite 800
Sacramento, CA 95814

RE: California High Speed Train Project
Fresno to Bakersfield Section

Dear Authority Members:

I am writing on behalf of the Peoples Ditch Company regarding deficiencies in the Fresno to Bakersfield section of the High Speed Train Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) regarding the operation, maintenance and use of canal and ditch systems either owned or involved with. The Company has reviewed, supports, endorses and joins in the comments submitted by the Kings River Conservation District (KRCD) and Kings County Water District (KCWD). In addition to the comments submitted by KRCD and KCWD, we offer the following additional comments:

1. The EIR/EIS fails to address the additional time and expense for Company personnel having to drive several hundreds of additional miles each year to operate the canal systems due to the severance and interference the alignment of the High Speed Rail will cause. This impact will not be limited to the ditch tender trucks, but also to spray equipment, dump trucks, road graders, tractors and other ditch maintenance equipment. An analysis and assessment of these costs should be made on a ditch-by-ditch basis so that appropriate severance damages may be calculated.

2. The EIR/EIS fails to assess the air impacts due to the additional vehicular and equipment traffic caused the aforementioned severance and interference with ditch operations. An analysis of these impacts should be included.

Submission L002 (Michael Nordstrom, Tulare Lake Basin Water Storage District, et al. (Atty. for), Law Offices of Michael N. Nordstrom, October 13, 2011) - Continued

3. The EIR/EIS fails to address the impacts of delayed response times and the resulting damages related to ditch breaks and other emergencies on the canals and ditches. The EIR/EIS should address how the restricted access in emergencies should be mitigated.

4. The EIR/EIS fails to address the additional costs and the manner in which repairs and modifications to the canal facilities at the rail crossings will be handled.

Should you have any questions of which to discuss the concerns and issues of these agencies, please feel free to contact me at this office.

Very truly yours,

LAW OFFICES OF MICHAEL N. NORDSTROM

MICHAEL N. NORDSTROM, Attorney at Law

cc: Dale Kuntz, Peoples Ditch Company

clients/high speed rail/10-11-11 ltr to CA High Speed Rail - PDC

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222 W. LACEY BLVD.
HANFORD, CALIFORNIA
93230

October 11, 2011

California High Speed Rail Authority
770 "L" Street, Suite 800
Sacramento, CA 95814

RE: California High Speed Train Project
Fresno to Bakersfield Section

Dear Authority Members:

I am writing on behalf of the Settlers Ditch Company regarding deficiencies in the Fresno to Bakersfield section of the High Speed Train Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) regarding the operation, maintenance and use of canal and ditch systems either owned or involved with. The Company has reviewed, supports, endorses and joins in the comments submitted by the Kings River Conservation District (KRCD) and Kings County Water District (KCWD). In addition to the comments submitted by KRCD and KCWD, we offer the following additional comments:

1. The EIR/EIS fails to address the additional time and expense for Company personnel having to drive several hundreds of additional miles each year to operate the canal systems due to the severance and interference the alignment of the High Speed Rail will cause. This impact will not be limited to the ditch tender trucks, but also to spray equipment, dump trucks, road graders, tractors and other ditch maintenance equipment. An analysis and assessment of these costs should be made on a ditch-by-ditch basis so that appropriate severance damages may be calculated.

2. The EIR/EIS fails to assess the air impacts due to the additional vehicular and equipment traffic caused the aforementioned severance and interference with ditch operations. An analysis of these impacts should be included.

Submission L002 (Michael Nordstrom, Tulare Lake Basin Water Storage District, et al. (Atty. for), Law Offices of Michael N. Nordstrom, October 13, 2011) - Continued

3. The EIR/EIS fails to address the impacts of delayed response times and the resulting damages related to ditch breaks and other emergencies on the canals and ditches. The EIR/EIS should address how the restricted access in emergencies should be mitigated.

4. The EIR/EIS fails to address the additional costs and the manner in which repairs and modifications to the canal facilities at the rail crossings will be handled.

Should you have any questions of which to discuss the concerns and issues of these agencies, please feel free to contact me at this office.

Very truly yours,

LAW OFFICES OF MICHAEL N. NORDSTROM

MICHAEL N. NORDSTROM, Attorney at Law

cc: Dale Kuntz, Settlers Ditch Company

clients/high speed rail/10-11-11 ltr to CA High Speed Rail - Settlers

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222 W. LACEY BLVD.
HANFORD, CALIFORNIA
93230

October 11, 2011

California High Speed Rail Authority
770 "L" Street, Suite 800
Sacramento, CA 95814

RE: California High Speed Train Project
Fresno to Bakersfield Section

Dear Authority Members:

I am writing on behalf of the Last Chance Ditch Company regarding deficiencies in the Fresno to Bakersfield section of the High Speed Train Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) regarding the operation, maintenance and use of canal and ditch systems either owned or involved with. The Company has reviewed, supports, endorses and joins in the comments submitted by the Kings River Conservation District (KRCD) and Kings County Water District (KCWD). In addition to the comments submitted by KRCD and KCWD, we offer the following additional comments:

1. The EIR/EIS fails to address the additional time and expense for Company personnel having to drive several hundreds of additional miles each year to operate the canal systems due to the severance and interference the alignment of the High Speed Rail will cause. This impact will not be limited to the ditch tender trucks, but also to spray equipment, dump trucks, road graders, tractors and other ditch maintenance equipment. An analysis and assessment of these costs should be made on a ditch-by-ditch basis so that appropriate severance damages may be calculated.

2. The EIR/EIS fails to assess the air impacts due to the additional vehicular and equipment traffic caused the aforementioned severance and interference with ditch operations. An analysis of these impacts should be included.

Submission L002 (Michael Nordstrom, Tulare Lake Basin Water Storage District, et al. (Atty. for), Law Offices of Michael N. Nordstrom, October 13, 2011) - Continued

3. The EIR/EIS fails to address the impacts of delayed response times and the resulting damages related to ditch breaks and other emergencies on the canals and ditches. The EIR/EIS should address how the restricted access in emergencies should be mitigated.

4. The EIR/EIS fails to address the additional costs and the manner in which repairs and modifications to the canal facilities at the rail crossings will be handled.

Should you have any questions of which to discuss the concerns and issues of these agencies, please feel free to contact me at this office.

Very truly yours,

LAW OFFICES OF MICHAEL N. NORDSTROM

MICHAEL N. NORDSTROM, Attorney at Law

cc: Neil Bellamy, Last Chance Ditch Company

clients/high speed rail/10-11-11 ltr to CA High Speed Rail - LCDC

Response to Submission L002 (Michael Nordstrom, Tulare Lake Basin Water Storage District, et al. (Atty. for), Law Offices of Michael N. Nordstrom, October 13, 2011)

L002-1

Refer to Standard Response FB-Response-TR-02.

The HST alternatives do not cross the Tulare Lake Basin Storage District service area. The BNSF and Corcoran Elevated Alternative follow an existing rail transportation corridor through the city of Corcoran and the Corcoran Bypass alignment is to the east; the BNSF Alterative continues south along SR 43; and although the Allensworth Bypass branches off west of SR 43, it is located southeast of the Tulare Lake Basin Storage District service area. Overpasses would be built along SR 43 approximately every 2 miles in this area. Therefore, there would be minimal, if any, disruption to maintenance equipment within the district's service area and major access routes to the service area would be maintained. Therefore it is not expected that the district would be required to travel substantially more miles each year to maintain their canal system.

L002-2

Refer to Standard Response FB-Response-AQ-03.

L002-3

Refer to Standard Response FB-Response-S&S-01.

The HST would not cross the Tulare Lake Basin Storage District service area and therefore response times for the district to respond to ditch breaks or other canal or ditch emergencies would not be affected for equipment stored within the service area. Potential increases in travel time for equipment to travel across the HST alignment from east of SR 43 would be minimal because roadway overpasses would be located approximately every 2 miles along major access roads.

L002-4

Refer to Standard Response FB-Response-HWR-01.

The HST alternatives do not cross the Tulare Lake Basin Storage District service area. There would not be disruptions to repairs and modifications of canal facilities within the district's service area. Potential increases in travel time for equipment to travel across the HST alignment from east of SR 43 would be minimal because roadway overpasses

L002-4

would be located approximately every 2 miles along major access roads. Therefore it is not expected that the district would incur additional costs associated with traveling substantially more miles to repair or modify their canal system.
As discussed in Section 3.8.5.3 of the EIR/EIS, hydraulic conveyance capacity in canals and ditches that cross the alignment alternatives would be maintained. Culverts would be installed at canals and ditches and in areas adjacent to culverts currently in place on the BNSF Railway where the alignments are parallel. Culverts would be designed to maintain or provide greater hydraulic conveyance capacity of the existing canal, ditch, or adjacent culvert. In the context of irrigation canals, culverts include pipes, box structures, or inverted siphons used to pass water from an open canal headwork under the HST embankment and adjacent embankments.

Submission BO003 (Shelli Andranigian, On behalf of the Andranigian Family and Andranigian Farming, October 13, 2011)

October 12, 2011

OCT 14 2011
Received
Bill Kounis

Thomas J. Umberg, Chairman
California High Speed Rail Authority
P.O. Box 41218
Sacramento, CA 95841

Dear Chairman Umberg,

First of all, thank you very much for the press release issued on October 5, 2011. We truly appreciate the additional time given to review the massive DEIR/DEIS document since we are still in the midst of reviewing it in its entirety.

However, I am still contacting you today re: two (2) parcels of land owned by the Andranigian Family which are currently in the proposed California high–speed rail route and will be adversely impacted via air, land and water. The HSR route is a triple-threat to both our property and our health.

Our properties are along the scenic and majestic Cole Slough of the Kings River. Lush oak trees and foliage dot the area which is inhabited by various forms of wildlife.

BO003-1

Parcels impacted by project footprint appear on Sheet 37 Appendix 3.1-A and Sheet 38 Appendix 3.1-A. Our concerns are about both the temporary and permanent impacts to these parcels.

The permanent impacts were first discovered in May, while the temporary impacts were just discovered last month while reviewing the DEIR/DEIS. Both of these impacts create a myriad of more questions; notwithstanding, why we were never told about the latter (temporary impacts), since they are just as detrimental if not more so than the permanent ones.

BO003-1

The temporary construction sites proposed will disrupt the entire farming operation on both parcels impacted by the project footprint. They will also serve to destroy prime farmland due to hazardous waste issues which will also adversely impact the land and the water on the property.

BO003-2

Air quality will also be eroded and thus harm three generations in our family who have sinus and allergy issues. We also have family members who are ultra sensitive to sound. These are extremely serious environmental issues and major health issues. How are you able to bypass such concerns and what are you doing to make sure this doesn't happen? **I await your response to this critical question.**

BO003-3

The impacted parcel which is the "Home Place" is only ¼ mile from the "temporary construction site." How long is "temporary?" Is "temporary" 5 (five) years or is "temporary" forever if the federal funds run out? **I await your response to this critical question.**

BO003-4

The "permanent" section on the "Home Place" will be about a ½ mile from the family home. What happens if there is a derailment at the projected "high-speed" of these trains? How will you account for any potential harming of and/or loss of life? **I await your response to this critical question.**

This completes my comments for the draft document concerning the Fresno to Bakersfield route that was removed on October 5, 2011 for some unknown reason.

Sincerely,

Shelli Andranigian

Shelli Andranigian
on behalf of the Andranigian Family and Andranigian Farming
19500 S. Highland
Laton, CA 93242

Submission BO003 (Shelli Andranigian, On behalf of the Andranigian Family and Andranigian Farming, October 13, 2011) - Continued

Page 3

Mailing address:

Shelli Andranigian
Andranigian Family/Andranigian Farming
P.O. Box 752
Laton, CA 93242

Enclosure
cc: Michael L. Farley, Esq.

PLEASE NOTE: The following is a complete transcript of the comments I made on Wednesday, September 21 to the panel at the CHSRA Public Hearing in Hanford, California. I was told by a CHSRA representative to slow down for their appointed court reporter. **PLEASE ALSO NOTE:** This speech was written and given before the October 5, 2011 press release was issued.

Good evening and welcome to Hanford. My name is Shelli Andranigian and I represent the Andranigian Family. We have lived in Laton, California for 50+ years and have also owned and farmed a 135-acre parcel of land since 1945. This "Home Place" is along the Cole Slough of the Kings River and also part of the proposed high-speed rail route.

My folks have been humanitarians. They helped Kings River Conservation District (KRCD) save the town of Laton in 1969 when our family furnished dirt to build levees to keep this "train town" from flooding. It took KRCD eight (8) years for them to bring someone to level the ground where the dirt had been excavated so our family could again farm this 30 acres of prime farm land.

My dad also farmed and saved the land of his neighbors, the Inouye Family in Kingsburg, California while they were interned during World War II.

We have two (2) properties in the proposed high-speed rail pathway – the aforementioned 135-acre "Home Place" and a 240-acre farm across and adjacent to HWY 43 by the Cole Slough of the Kings River.

Our land, like many others who farm and dairy in the Central Valley are rich and fertile ones, providing for those all over the world. This is also the busiest time of year as it is harvest season.

Submission BO003 (Shelli Andranigian, On behalf of the Andranigian Family and Andranigian Farming, October 13, 2011) - Continued

Page 2

California farms and dairies have the best to offer the world over. I have traveled abroad on both light rail and speed trains, so I should know!

I do have a laundry list of questions as I try to make sense out of 30,000 pages of documents in a short time frame in order to study and comment not just here in a brief three (3)-minute allotment, but more extensively by October 13th.

While I appreciate the 15 extra days to do so (comment, review and question) from 45 to 60 days -- 180 days is more necessary, realistic and fair. It is especially important for those of us in the proposed high-speed rail route to have ample time to look over and fully prepare for something that is not only impacting Californians TODAY, TOMORROW, NEXT WEEK, NEXT MONTH, NEXT YEAR AND THE YEARS FOLLOWING. BUT FOR ALL FUTURE GENERATIONS TO COME THE WORLD OVER!

I have two (2) requests. The first is to please fully consider extending our comment and review period to 180 days. The second is to properly address correspondence sent to us.

My name is not just "Owner/Occupant." It is legally "Shelli Andranigian." Thank you!

Shelli Andranigian

Response to Submission BO003 (Shelli Andranigian, On behalf of the Andranigian Family and Andranigian Farming, October 13, 2011)

BO003-1

Refer to Standard Response FB-Response-SO-01.

See Volume I, Section 3.14.5.3 for information on the construction period impacts on agricultural lands. For information on the property acquisition and compensation process, see Volume II, Technical Appendix 3.12-A.

BO003-2

Qualitative and quantitative discussions of health impacts during project alignment construction were provided in Section 3.3.6.3 of the Revised DEIR/Supplemental DEIS.

The HST would be electrically powered. Therefore, there would not be any direct combustion emissions from the HST to cause health concerns, such as asthma or other respiratory diseases, during operation. Fugitive-dust emissions due to HST travel are not expected to be a significant source of pollutants either (see Appendix 3.3-A of the Final EIR/EIS for details). For localized health impacts of the heavy maintenance facility (HMF), the cancer and non-cancer chronic and acute hazard risk analyses conducted for the Revised DEIR/Supplemental DEIS were for a prototypical facility with conservative estimates of equipment operations and locations and of the locations of nearby sensitive land uses. A decision on the HMF location will be made following certification of the San Jose to Merced Final EIR/EIS. A site-specific Health Risk Assessment for the HMF operation will be conducted after a final HMF site is selected and detailed design information becomes available. Quantitative cancer risks and non-cancer hazard indexes due to HMF operation will be evaluated in the final Health Risk Assessment. Mitigation measures, if necessary, will be included to ensure that the health risk significance thresholds are not exceeded at the sensitive land uses.

BO003-3

Temporary impacts would be up to 5 years. The temporary construction sites were identified as possible locations for project construction laydown and staging areas. The Authority cannot require the landowner to lease these areas to the state for the project; therefore, construction activities may not take place at this location without the agreement of the property owner.

BO003-4

Refer to Standard Response FB-Response-S&S-02.

As discussed in Section 3.11 of the EIR/EIS, because the HST would carry passengers and be electrically powered, there would be no safety hazard associated with HST cargo or fuel. The hazard associated with the derailment of a HST is the physical mass and speed of the train colliding with a structure or people, which could only occur adjacent to the right-of-way.

Since HSTs began operating in 1964, there has only been one case where a train within a dedicated HST right-of-way has left the operational corridor. That was an accident in China in 2011, described in Section 3.11.1 of the EIR/EIS. A formal government investigation identified the cause of the accident as a systemwide lack of emphasis on safety, both in terms of equipment development and operating personnel training, by the management of China's HST system. Where industry standards for design, maintenance, and operation have been employed, this type of accident has not occurred over the four decades of HST operation. Therefore, if a HST derailment were to occur in the vicinity of the family home, there is a very high probability that the train would remain within the HST right-of-way. Because the train would be contained in the HST right-of-way and would not contain cargo or fuel that would result in a fire, explosion, or the release of toxic substances, the project would not substantially increase hazards to this property.

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October 12, 2011

Merced to Fresno, Fresno to Bakersfield Draft EIR/EIS Comments
770 "L" St., Ste. 800
Sacramento, CA 95814

Re: Comments to HSR Draft EIR/EIS

Dear Sir/Madam:

We write on behalf of our clients, members of the protected communities (low-income, minorities, farmworkers and Native Americans in the six-county area from Merced to Kern of the Southern San Joaquin Valley. This letter responds to the substance of the HSR Draft EIR/EIS (draft report). As describe in more detail below:

1. The draft report reflects the failure to adequately meet public participation requirements, the Environmental Justice ("EJ") populations were not afforded their right to participate in the planning of the project and to shape it to address their concerns. By extension, there was no public participation in the development of the project's equity analysis.
2. The draft report fails to properly identify disproportionate impacts. Title VI and Executive Order 12898, however, require evaluation of a far broader question: whether the HSR Project (Project) will deliver a fair share of benefits to affected EJ populations while not exposing them to an unfair share of its burdens. The report does not adequately evaluate this broader question at all.
3. The draft report fails to include adequate steps to analyze specific mitigation measures and perhaps other Project alternatives. Indeed, it displays a faulty understanding of core purpose of the draft report.

PREFACE

The narrative of the High-Speed Rail project has been analogized with the familiar quote: *A rising tide raises all boats.* Indeed, this mantra ("economic growth solves all problems") was repeated again and again throughout both reports. While it is true that a rising tide lifts all boats a rising tide neither makes the boats bigger nor more capable; while 44-foot yachts are well served by the higher sea level, small boats are left high and dry. The High-Speed Rail project presents the classic example of the intersection of government policies and race, poverty

LSC

and social justice so reminiscent of our nation's highway and urban renewal programs of the 1950s and 1960s.

That having been said, if there is one theme that unites all admirers and detractors of the Project, it is the lure of jobs; thousands, hundreds of thousands right here in the Central Valley. The HSR has been touted as a game-changer, the economic generator that will usher in an economic Renaissance in the Central Valley. The fact of the matter is that the promise of jobs is illusory and it is disingenuous and professionally irresponsible to assert otherwise. At best, only a trickle of the temporary construction jobs and the permanent jobs will go to local residents. Unless targeted goals and set-asides are memorialized in writing and infrastructure establish to outreach, recruit, train, provide supportive services, monitor and enforce compliance, only a fraction of the small trickle of jobs will end up local. The Central Valley has been the home to numerous large government projects (courthouses, college campuses, highways, etc.) as well as private ventures bought by and sold to unwitting local officials and communities upon the promise of jobs. Experiences teaches, though the lesson has yet to be learned, that the so-called "local" workforce will come not from the subject communities but from outside of the region and/or other states.

More specifically to the point, the bottom line is equity. For the disadvantaged communities, the promise of the HSR is not so much its generative potential but rather its redistributive potential of benefits, i.e., jobs. This Project provides an opportunity for action, a course for policymakers and planners to take because it is legally mandated, politically sensible and socially responsible. It is this final point that the comments in the balance of this letter seeks to address.

INTRODUCTION

It's often said that there are two Californias: The large urban centers of northern and southern California in contrast to the rural areas of the Central Valley. In that connection, the polarization of haves and have-nots in rural communities throughout the Central Valley is even more stark. 2010 was a bumper year for agriculture in the Central Valley and 2011 promises to be the same. Yet there is a plethora of articles and studies in the past twenty-five year detailing its Third World conditions, e.g., lack of suitable drinking water, poor quality air, 25% of its population without health insurance, alarmingly high percentage of dilapidated and woefully substandard housing, perennial double-digit unemployment even during flush times, near-bottom ranking in household income, inordinately high number of dropouts, low rate of graduates going on to college, nation-high rate of teenage pregnancy, increasing number of youth incarceration, one of the highest rate of gang-affiliation per capita statewide, etc. This paradox is in many ways a function of agricultural economies, but what is different in the case of the Central Valley is how

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widespread and concentrated this persistent poverty is in our nation's fruit basket.[1]

LEGAL BACKGROUND

Title VI of the Civil Rights Act of 1964 provides that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, ***be denied the benefits of***, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (42 U.S.C. § 2000d, emphasis added.)

President Clinton's 1994 Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires that: "To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." (59 Fed. Reg. 7626, § 1-101.)

Order 5610.2, 62 Fed. Reg. 18,377 [1997]). Like Title VI, DOT's Order implementing the Environmental Justice Executive Order prohibits actions that cause "disproportionately high and adverse effect on minority and low-income populations," defining "adverse effects" to include "***the denial of, reduction in, or significant delay in the receipt of, benefits of*** DOT programs, policies, or activities." (DOT Order, 62 Fed. Reg. at 18381, emphasis added.) A central goal of Title VI is to "[p]romote the full and fair participation of all affected populations in transportation decision making." (Circular 4702.1A, ch. II, § 1(c).) Doing so requires recipients to "offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions." (Circular 4702.1A, ch. IV, § 9.) In particular, recipients must "provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the

[1] It is no coincidence that the first phase of the Project starts in the South San Joaquin Valley (Central Valley). As one of the regions in the country that has been hardest hit in the economic downturn, local officials see the HSR as a godsend to halt the economic freefall that has plagued the region. At the same time, politically, it presents the path of least resistance for CAHSRA/FRA (Authorities). The Central Valley lacks the political muscle and culture, leadership, networks, scale and resources to mount a sustainable opposition to the Project or even one that can exact just compensations and mitigations. And so, the Authority will have free reign to exploit, experiment and fine-tune the Project en route to the big shows in the Bay Area and Southern California.

planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures)." (DOT Order, 62 Fed. Reg. at 18380; FHWA and FTA, PUBLIC INVOLVEMENT TECHNIQUES FOR TRANSPORTATION DECISIONMAKING (1996) ("[o]utreach to traditionally-underserved groups helps assure that all constituents have opportunities ***to affect the decision-making process***. . . ."; "increas[ing] participation by underrepresented groups ***so they have an impact on decisions***.") Title VI specifically provides Federal agencies with broad power to effectuate compliance, not only through the power of the purse but "by any other means authorized by law." (42 U.S.C. § 2000d-1.)

The DOT Environmental Justice Order further requires that the Executive Order provisions "will be administered to identify the risk of discrimination, early in the development of the program, policy or activity ***so that positive corrective action can be taken***." (DOT Order, 62 Fed. Reg. at 18380 emphasis added.)

In short, the central inquiry under both Title VI and the Executive Order is whether minority and low-income populations will receive a fair share of the benefits (and burdens) flowing from the investment and use of federal funds. Fair participation in the benefits entails an "early" and "meaningful" opportunity to participate in the planning of the decision. And where past noncompliance requires remedial action, FTA must use all authorized means to ensure that remedy is one which will ensure future fairness.

A. The Authority Fails to Engage the EJ Communities in Meaningful Participation in the Development of the High-Speed Rail Project.

An important strength of FTA's current Circular is its integration of civil rights requirements with those of the Executive Order on Environmental Justice. Integrating these overlapping requirements streamlines compliance for recipients. More importantly, it serves two major substantive goals. First, it helps protect low-income population from actions that deny them a fair share of the benefits of transportation funding. Second, as required by the Executive Order, it supplements Civil Rights protections for minority populations under Title VI with the added protection that an equity analysis can bring by identifying and addressing the risk of unfairness before it occurs. It necessarily begins with public participation.

Transparency and access for all to make their views known but especially in the context of environmental harms is crucial to establishing the legitimacy of the policy. Thus, the process grants special status to socially vulnerable groups according them consultation, technical assistance, and participation in the formulation of issues and submitting comments. In stark contrast to the manner in which the Authority affirmatively engaged local government and special interests (agribusiness, chambers of commerce, etc.), in the case of protected communities, neither ways to notify them of public meetings nor FTA guidelines (FTA

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publication: *Public Involvement Techniques for Transporation Decisionmaking)* to promote open dialogue were employed or adhered to during the project development.

The report reflects that very few meetings were held with environmental justice communities during the planning period. While 2011 saw a spike of EJ outreach efforts, it was too little, too late. From 2007 to 2010, approximately 460 public and agency meetings were held in the Merced-Fresno and Fresno-Bakersfield study areas; of these, only six were related to EJ outreach. This can be compared to over 40 meetings during the same time period with groups and individuals representing business, development, and agribusiness interests. Exhibit A, attached, compares EJ outreach to the balance of public and agency meetings held in the Central Valley from 2007-10. The efforts to inform and engage EJ communities during the planning period were severely lacking and do not reflect an attempt to reach EJ communities in a meaningful way.

Although the report does a credible job in identifying the EJ communities, it nevertheless fails to go beyond that first step. The Central Valley is the home to many discrete and insular minority groups – many of whom are new immigrant, limited English-proficient, low literacy and rural residents (Mixtecos, Triques, Zapotecos, Hmongs, Cambodians, Laotians etc.) As new immigrants, they have imported their cultural practices where communication, religion and social relations are all intimately interwoven. This is a difficult population to outreach due to their general mistrust and misunderstanding of the process and the system. Suffice it to say, each community is unique. In terms of non-English speaking communities, large public hearings or formal workshop are ineffective. Particularly in monolingual/multi-lingual communities resorting to trusted sources in the form of local liasons (e.g., Fairmead Community & Friends), community newspapers (La Vida del Valle), radio (e.g., Radio Bilingue) and public-access television (e.g., Univision) are absolute musts. That said, an eight-second public service announcement on a Spanish television station doesn't suffice as outreach for purposes of soliciting community input, especially when undertaken several years back. Moreover, a telephone survey conducted with a checklist is not the level of outreach contemplated by Title VI and the Executive Orders. The fact of the matter is that the overwhelming majority of those in EJ communities do not understand the nature and importance of the Project as it relates to their everyday lives, nor do they appreciate it immediacy.[2]

To the extent that a plan was formulated to outreach to the English-limited communities, there is no evidence of steps taken to outreach to and inform the EJ communities of the subject issues,

[2] See Susan L. Cutter et al., *Social Vulnerability to Environmental hazards,* 84 Social Science Quarterly 242,251,253 (June 2003) (The lack of wealth is a primary contributor to social vulnerability as the fewer available resources make the community less resilient to hazardous impacts; similarly, race contributes to social vulnerability through the lack of access to resources, cultural differences and the social, economic and political marginalization that is often associated with racial disparities.)

what is at stake, how it impacts them, why their input is crucial to the process, and future benefits (services, jobs, impacts, etc.). Executive Order 13166 *"Improving Access to Services for Persons with Limited English Proficiency"* directly addresses the need for service providers to ensure access to federally funded programs where language access presents a barrier. Significantly, the Order specifically references Title VI of the Civil Rights Act of 1964 in its guidelines. Meaningful participation goes beyond holding hearings downtown or the availability of interpreters. It is inappropriate to assume that members of the EJ communities have received adequate notice and outreach, or that because a meeting was held in an area where EJ communities predominate, that their concerns were necessarily represented at that meeting. The report makes exactly these presumptions. [3]

Public participation is not intended to be an afterthought in the Project planning process but rather fully integrated with planning and its development from the inception and ongoing to ensure an accurate assessment and valid decision-making that appropriately reflect community values. Responsible staff should separately identify and work with each community to customize public participation. Community input is key to developing the community profile, investigating and identifying community impacts and identification and formulating of minimization, mitigation and enhancement measures.

Under the National Environmental Policy Act (NEPA), the preparation of an Environmental Impact Statement (EIS) begins with "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." Based on the nature of the significant issues that are identified in the "scoping" process, the methodology and metrics for the analysis is then determined.

More importantly, for purposes of this discussion, "scoping" is critical to determining the potential equity impacts that need to be analyzed and the methodologies to use. It is in the equity scoping process that information regarding serious concerns of the EJ communities of inequity and discrimination, including what benefits or burdens they believe might be shared unfairly are gathered. The recipient would then be required to design a methodology and metrics specifically tailored to determine the existence and significance of each serious equity impact raised in the public process. In short, it would not be permitted to treat any equity analysis as a mere ritual, but instead to make a good faith effort to investigate the concerns that are actually being raised in an open public process by members of protected populations. This is then incorporated into the analysis on mitigations.

[3] From section 3.12 of the Fresno-Merced EIR/EIS: "During [initial scoping] meetings, several comments were made by the general public. Because the study area consists largely of communities of concern, the comments from the public reflect their concerns as well."

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B. The Draft Report Fails to Adequately Identify and Evaluate the Negative Environmental Impacts on the EJ Communities

The relationships between transportation and the environment are varied and multidimensional. The impacts may be direct, indirect, induced and cumulative. While the public is most familiar with the fiscal and environmental impacts of a project, the socio-economic impacts are often less obvious and therefore much more difficult to define and gauge. Yet their impacts are both profound and long term. A socio-economic impact analysis examines the real life effects on the human environment caused by development in terms of economic vitality, physical health and social well-being of the community. Given the legal mandate to ensure social equity, the Project analysis, both qualitative and quantitative, necessarily relies on community residents as a resource.

1. The Socio-Economic Analysis Is Inadequate Due to an Incomplete and Flawed Data Base

BO004-4

A socio-economic impact analysis is part and parcel to the decision-making process of the Project at every level. The report does an adequate job identifying and analyzing the direct environmental impacts of the project but falls woefully short in addressing the indirect impacts in the form of economic and social externalities. While it acknowledges the nexus between environmental issues and their unintended adverse consequences which burden protected communities disproportionately, it goes no further than that. The EIR/EIS is much more focused on the physical measures of environmental damages caused by the Project. The evaluation narrowly defines the negative impacts and lacks appropriate quantitative and qualitative measures of such.

Although it accords attention to the demographics, retail services and housing markets, public services, employment and income levels, community aesthetic qualities, etc., there is lacking, the in-depth investigation and analysis as they specifically pertain to the EJ communities. The report offers little insight into trends (e.g., anticipated changes in demographics, gaps in services, etc.) both locally and regionally. There is a need for a closer look particularly at key indicators in each category. Instead, the report offers generalizations that are neither supported in fact nor warranted.[4] Also needed is an analysis of the changes in the social structure and the inner workings of the community in real and measurable terms. By limiting the range of impacts to a more global context, the report avoids identifying issues that must be remedied to ensure that the benefits and burdens are equally and fairly distributed.

[4] A particularly egregious example of this is found in Section 3.12 of the Merced-Fresno EIR/EIS, which claims that "[u]nder all alternatives, benefits would likely accrue to a greater degree to communities of concern because they compose a large percentage of the region." This broadly-sweeping and wildly inaccurate claim is reveals an unrealistic and un-nuanced view of the socioeconomic realities discussed herein.

2. The Socio-Economic Analysis Fails to Account for Economic Externalities

Transportation policies cause certain externalities which are separate costs or benefits that result from the production of the good or service that is born by sectors of the community other than the original producer and recipient. In the instance of the HSR, examples of these negative costs are:

- **Institutional Racism**

  Trends at the state level are symptomatic of the economic disparities at the regional and local levels and have far-reaching social and economic implications. The Project continues the legacy of institutional racism as evidenced by the placement of the transportation project in depressed communities lacking in political clout and through residential neighborhoods of low-income and minority households.

- **Gentrification**

  Changes in social structure and interactions among community members result from . Transportation projects shape development and land use changes Transportation investment causes reinvestment and rehabilitation of a former depressed and degraded area serves to alter residential location patterns often starting in motion the process by which higher income households displace lower income residents of a neighborhood, permanently changing the essential character and culture of the community. One of the unintended consequences is that improving the physical condition and appearance of commercial and residential properties increases the area's desirability due to better safety, new road access and improved amenities. Perceived increased in property values triggers neighborhood revival. The end result is the outflow of old residents to community fringes or elsewhere. As higher income families upgrade their housing, businesses follow suit through reinvestment and rehabilitation to accommodate the new demographic groups, and the cycle repeats itself. Further, often more affluent newcomers are able to capture local government, thus affecting building code and standards as well as public use changes, thus altering the social and environmental setting. This further alienates and hastens the relocation of lower-income residents.

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- **Unmet housing needs**

Changes in employment and income directly influence a community both short and long term generating the need for different types of housing to accommodate a higher-income households. A cursory review of the state-mandated housing plans of the five counties establishes conclusively the acute shortage of affordable housing. This is due in large part to the lack of infrastructure, number of substandard units in need of replacement, few nonprofit developers, rapid growing demographic, and the economy in the Central Valley. Not only is the existing housing stock inadequate to meet the anticipated relocation housing needs of displaced families, but the affected communities have yet to even plan for the housing needed to accommodate the anticipated descent of the initial 150,000 construction workers into the Central Valley followed by the 350,000 permanent knowledge-based and service workers and their families. The assertion in the report that there is a sufficient housing stock to accommodated the dislocated households is wildly inaccurate with no basis in fact. And it only gets worse over time. The siting of the heavy maintenance facility has yet to be accounted for.

BO004-5

- **Cost of living increase**

A significant increase in populations with different demographics imposes different market demands that may signal new development and expansion that threaten and displace an assortment of traditional retail stores that offer low-price products and services to former residents. The inflow of higher-income families into the area will result in more upscale retail businesses offering higher-priced goods and services. While the report claims increased property values as one of the economic boons that HSR will confer on the region, the maps in Exhibit D show that many of the communities that will be most affected by the project consist overwhelmingly of renters.

BO004-6

- **Delinked from schools, services and support system**

When families are uprooted and move out of a neighborhood, they must pull their children from their present schools and enroll them in different ones. This has a profound impact on students and their learning. Additionally, families may be denied access to parks, cultural and recreational facilities, schools, health clinics, and other public, private and faith institutions.

- **Spatial mismatch**

The gentrification transformation of neighborhoods leads to another transportation equity problem of spatial mismatch between residential and employment locations. As low-income families are pushed to the outer fringes, these low-skill and low-wage workers with few transportation options are forced to travel from distant outlying areas to go to work. The vast majority of them will have to reverse commute which will result in worsening of air quality.

BO004-7

- **Adverse health effects**

The Project will have the effect of not only exacerbating but perpetuating the health disparities. The South Central Valley is dubbed the Asthma Capital of this country. Close to one of every four newborns is born with the condition. In addition to having the worst air pollution, compared to the rest of the state, the six counties rank at or near the bottom of every community health status indicator. It is widely recognized and is borne out by the most recent data that racial minorities face health disparities compared with their white counterpart. Disparate socio-economic conditions bear directly on these inequitable health outcomes. To the extent that the Project will cause residents to experience higher risks of diseases and injuries arising from air pollution and personal safety, racial minorities will fare worse than their white counterpart due to the lack of access to health care.

- **No user benefits for EJ communities**

The report claims that the HSR will compete favorably with regional jet. According to a study entitled *The Financial Risks of California's Proposed High-Speed Rail Project" by a* prestigious group of financial experts, the respective fares will be comparable and not favorable for HSR. Accordingly, the ridership of the HSR will pretty much identical with the regional jet ridership, white, middle and upper class.

- **HSR detracts from local public transportation**

Members of EJ communities are more public transportation reliant, with limited mobility options. As regards the former, the need will become more pressing as dislocated families are forced to relocate further out from the central core of town. For them, public funding is be better spent establishing or expanding a public transportation system.

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- **Road traffic and closures**

  As newcomers arrive, the rise in rent and house prices increase will force out the original residents who cannot afford to stay. They will face increased road traffic that accompanies rapid growth in addition to being forced to travel longer distances. The additional travel expenses reduce the disposable funds they need for rent, food, etc. Moreover, the numerous road closures particularly in the rural areas will delay the ability of first responders such as medical, fire, and police personnel to answer emergencies, thereby posing an endangerment to health and safety.

BO004-8

BO004-9

- **Destruction of social capital**

  Older neighborhood will begin to decline due to the loss of social identification and cohesion, and erosion of the historical character of the area.

- **Not just no new jobs, but loss of jobs**

  The report claims there will be an insignificant economic impact emanating from the 4,000 acres affected by the HSR alignment. While there are no academic empirical research examining the co-efficients on labor input or a systemic database that tracks the cost of production per acre for different crops, it is clear that a number of farm labor jobs will be lost, plus a multiplier effect of between 1.5 and 2 additional non-farm jobs lost.

BO004-10

  Ironically, the economic downturn has displaced many ex-farmworkers in the construction trade. The HSR Project has been touted as a generator of construction jobs. Yet a wealth of reports have concluded that major federal and state projects produces very little if any construction jobs for local residents, and the Central Valley certainly has its share of anecdotal evidence of these false promises. The state and federal prison projects are cases in point. The bottom line is that the Project will not generate any construction or permanent operations and maintenance jobs for local residents generally and EJ population specifically.

  While it claims thousands of new jobs will be created as part of the overall benefits to the region, the report contains no indications that those jobs will go to local hires. Additionally, the report ignores the impact of the Tribal Employment Rights Ordinance in its analysis.

C. The Draft Report Proposes No Targeted Mitigative Measures to Remedy the Disparate Impact on EJ Communities

1. The Equity Analysis Is Inadequate

FTA's guidelines to recipients incorporate the twin goals of Civil Rights Title VI and E.O. 12898 prohibiting discrimination based on race, color or national origin and actions that deny minority or low income populations a fair share of the benefits of transportation spending (including the denial or delay in their receipt) . Circular 4702.1A, at its core, mandates an "equity analysis" to identify potential disproportionate negative on EJ populations as a precursor to establishing a plan to avoid or mitigate identified impacts. Equity means no group should bear a disproportionate share of the negative environmental consequences. The intent of the law to protect the interests of vulnerable EJ communities is crystal clear.

The method by which to undertake the equity analysis is a three-step process, to wit: (1) identify all potential adverse impacts; (2) identify the EJ populations as well as the affected community at large; and (3) analyze the impacts on the EJ populations in comparison to the community at large. The equity analysis methodology is straight forward and grounded in a long line of discrimination litigation involving inquiries of "disparate impact." Findings of a significant disproportionate negative impacts on the EJ populations warrants a plan of action to mitigate or avoid them or a less-discriminatory alternative found.

Often, action that is ostensibly equitable in one context may prove inequitable in another context. The choice of methodology and metrics are critical to the analysis as is the interpretation of the findings. An equity analysis is valid to the extent that it measures the issues and impacts that affect the EJ populations. For example, if the EJ populations are subsumed within the community-at-large when measured (failing to take into account their greater social vulnerability), the equity analysis fails. By adopting an expanded scale, it becomes impossible to assess the socio-economic significance vis-à-vis EJ communities. The equity analysis in the report is replete with examples of failings to measure impacts and/or purporting to measure them using inapt methodologies and metrics. This tactical discourse of combining reasonable considerations with assertions and claims that do not bear on the real issues or generalized out of context, greatly compromises the legitimacy of this process.

The threshold inquiry turns on defining the issues and impacts that are relevant to the EJ communities. Accordingly, the public participation process required by federal law specifically extends to the scope of issues and impacts to be addressed by the equity analysis so that appropriate metrics and methodologies can be developed to measure each impact of concern to the EJ populations. Fact of the matter is to do so requires a robust outreach and

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engagement efforts during the planning stage to allow for significant and meaningful input from the protected communities which was not done in the first instance. It also requires a willingness to incorporate the resulting input into the project which was lacking.

BO004-11

Thus, the draft report's analysis is based on inadequate data due to lack of outreach and participation of the affected EJ populations. As a result of the flawed data, the current draft report does not permit a comparison of proposed project and potential alternatives that Title VI and the Executive Order require. Without the requisite public participation and input, the draft report poses the wrong questions and provides the wrong answer. What we have is a report with a preordained conclusion respecting needed mitigative measures. It comes as no surprise that the report concludes that the overall plan is equitable. The equity analysis, such as it was, employed evaluative methodologies that, by design, fail to capture the severe adverse impacts on vulnerable populations. An incomplete analysis of inequities would allow the Project to further entrench the very social vulnerabilities that it should be mitigating.

2. The Draft Report Proposes No Mitigative Measures

Specifically, Executive Order 12898 on Environmental Justice provides important protections to both minority and low-income populations. The Executive Order requires each agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." As implemented by the Secretary of Transportation, this obligation extends to recipients of U.S. DOT funding. *U.S DOT's Order To Address Environmental Justice in Minority Populations and Low-Income Populations* (hereinafter the "U.S DOT EJ Order") defines the "Programs, Policies, and/or activities" to which the Executive Order requirements extend to include "permits, licenses, and financial assistance provided by the DOT." 62 Fed. Reg. 18377, 18381, (Apr.15, 1997), Appendix 1(h). In other words, DOT must ensure that recipients of its financial assistance comply with the Executive Order.

These are strong admonitions that are not to be taken lightly. In particular, the requirement to "identify and address" inequities-to conduct an "equity analysis" and then take the steps necessary to avoid or mitigate identified inequities- provides a strong tool for ensuring Title VI and EJ compliance. The purpose of the equity analysis is to determine whether low-income and minority populations are receiving a fair share of the benefits and the burdens of transportation projects and programs. Unfortunately, whereas here, the "equity analysis" requirement is treated as little more than a formality.

The Authority is required to undertake a 3-step analysis, to wit: (1) Examine the negative impacts to determine whether they can be avoided; (2) if not, How can those negative impacts be minimized to lessen their effects; and (3) if inadequate, what mitigative measures can be

undertaken to address the barriers not only in the context of eliminating the same but opportunities for enhancement that comports with community needs. This is not an exercise confined to a unitary project development team but one informed by various stakeholders in the affected communities through robust public participation

BO004-12

The utility of an equity analysis is to formulate mitigative measures. What was needed, but not provided, is a detailed corrective action plan setting out how the mitigative measure are to be accomplished which the report fails to do. The closest it comes is offering an incomplete identification and half-hearted assessment of adverse impacts but never proposing actions to minimize, mitigate or offset their effects. In sum, there is no genuine mitigation proposed for the most significant impacts that will be felt by EJ communities.

The report misapprehends the function of an equity analysis in a Title VI analysis and a benefit-cost analysis in the NEPA process. They serve different purposes and one should not be substituted for the other. Because they address different issues, they can be used in a complementary way to describe a broad set of outcomes from a project and policy perspective. An equity analysis is more narrow in scope although it draws information from many of the same sources. It is to be undertaken separately. The draft report conveniently blurs the distinction between mitigations with alternatives. The former are actions that can be taken to remove disproportionate adverse impacts with the end goal of adopting a course of action with no discriminatory impacts. Alternatives, on the other hand, must be considered when mitigations are insufficient to remove the discriminatory impacts. If those disparities cannot be remedied by mitigations that cure the disparities and make the EJ population whole, then the project may not proceed unless there is no equally effective and less discriminatory alternative. Arguably, the precise range of appropriate mitigations and alternatives to analyzed will not be known until the affected EJ populations have had a meaningful opportunity to express their views, needs and concerns in the first instance.

BO004-13

It is abundantly apparent from the draft report that protection of the EJ communities was not viewed as being pertinent to this process other than in a perfunctory way. By assuming a foregone conclusion at the outset undercuts meaningful and significant participation by affected communities. The investigators studied one-way information and defined the problems and interpreted findings from the point of view of government and special interests. It was a sketchy analysis that fails to look at the impacts in a more focused manner and their implications as to whether they are positive or negative, temporary or long term and direct or indirect. The report is explicit in its intent to "demonstrate" that the projected economic growth is sufficient to meet the needs of EJ populations. Not only is there no evidence to support that finding, it is the wrong finding.

Submission BO004 (Baldwin S. Moy, California Rural Legal Assistance, Inc., October 13, 2011) - Continued

D. The Adverse Impacts are Reversible and Should Be Mitigated

Everyone in the five counties affected by the Project will face major disruptions -- noise, dust, inconvenience, and dislocation. (One of the advantages of the higher-income is having the choice to move to quite places with a nice view and clean air. They also have access to powerful political actors and the ability to hire lawyers and consultants.) But for the EJ communities, the frustration runs deeper. Not only do they not share in the community benefits but they will bear a disproportionate share of the burdens.

As pointed out above, the Project creates a wide spectrum of socio-economic benefits and burdens that impact the affected communities differently depending on their status, circumstances and resources. These disparate impacts range from health, energy-savings, air quality, safety, time consumption, land use and development patterns, etc. Different values can be attached to each of them for purposes of a comparative analysis but their extrapolation are not helpful in fashioning mitigations. What is measurable is the economic impact of this transportation investment in terms of economic activities which can be measured in many ways including projected total business output. But there are no discernible accessibility to these benefits for the EJ communities. However, job impacts, i.e., total jobs associated with wages are usually of the most interest to the general public because they are more understandable and measurable as a tangible goal.

While the Central Valley await the urban regeneration and economic growth, the positive expectation of employment opportunities in the form of well-paying jobs would be an apt consolation allowing the EJ populations to adapt to the new socio-economic conditions wrought by the Project.[5] However, this will not happen without a system in place that requires targeted policy change, planning, program implementation and community-based enforcement apparatus adoption. There is unequal access to the jobs created by the Project due to the fact that labor markets are geographically uneven. More pointedly, the EJ populations suffer disparity (e.g. job skills, educational background, gender, race, and mobility) in employment access due to historic and contemporary discrimination. What is required are pre-apprenticeship and apprenticeship programs to get these disadvantaged workers into the pipeline for these high-wage jobs as well as a regional transportation academy sorts that trains workers for these newly created jobs and provides high school and college courses for students seeking a career with the HSR. While the specifics of implementing such a program are outside the scope of these comments, we hope they will be the subject future discussions and possible proposals. Last but not least, there must be a mechanism for the monitoring and enforcement of local hire policies.

[5] It has been well-reported that this phase of the Project will produce between 135,000 to 150,000 prevailing wage jobs during the initial construction. These estimates are consistent with figures cited by the American Association of State Highway and Transportation Officials which estimates 30,000 to 40,000 jobs per 1 billion in transportation infrastructure investment.

CONCLUSION

Although the thrust and tenor of these comments seem to suggest that the Project confers no benefits to the EJ communities, that need not be the case. In the final analysis, it is all about equity. The minority, low-income and Native-American populations do not wish to prevent the Project. They are trying to prevent a large number of families from being displaced and the resulting disintegration of their communities. What the EJ communities wish is a report that sets forth a long term economic development vision matched by well-articulated mid-term strategies at the regional level with immediate targeted programs that allows them to access the community benefits locally, i.e, jobs. This is not only consistent with the broad public policy underlying ARRA funds but the Authorities have the legal obligation and the remedial power under title VI to effectuate its occurrence through this Project.

We stand ready to enforce these obligations , and appreciate the opportunity to actively participate in this process. More particularly, we welcome an opportunity to provide additional comments especially respecting a viable jobs program in order to bring the Project into compliance.

Thank you for your kind consideration of the points raised in this matter.

Very truly yours,

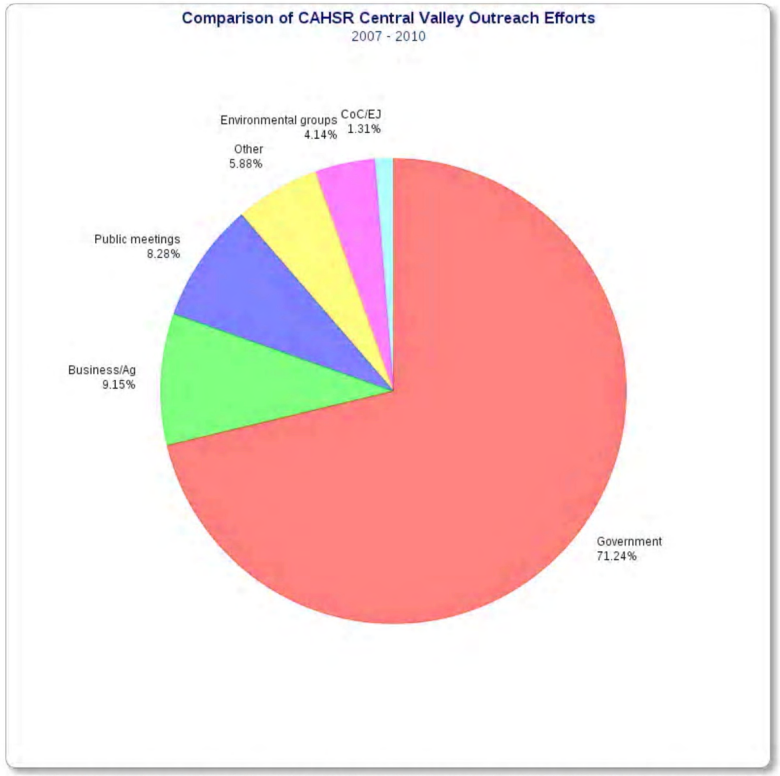
Baldwin S. Moy

Attachments:

Submission BO004 (Baldwin S. Moy, California Rural Legal Assistance, Inc., October 13, 2011) - Continued

Exhibit A

Comparison of Central Valley Outreach Meetings, 2007-2010



Source: California High-Speed Train Project EIR/EIS, Merced-Fresno and Fresno-Bakersfield Sections, "Public and Agency Involvement"

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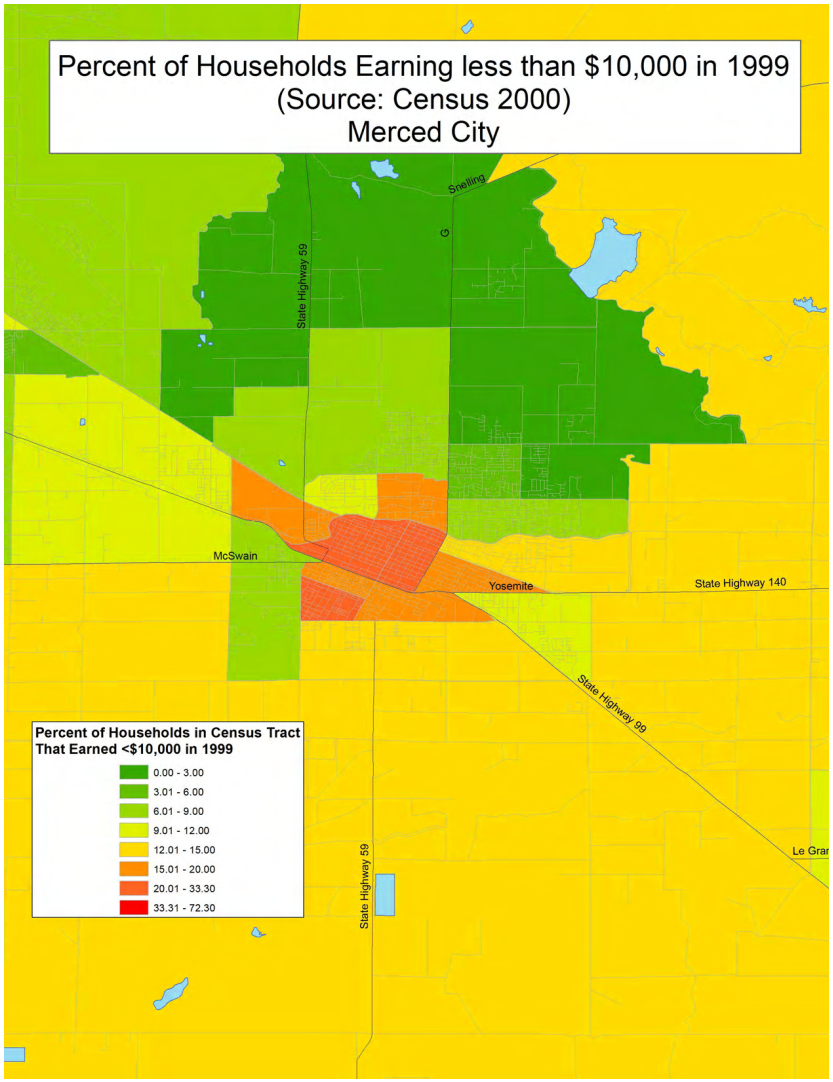
Exhibit B

Households Earning Under $10,000