

California High-Speed Rail Peer Review Group

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The Honorable Toni G. Atkins
Senate President Pro Tem
State Capitol Building
Room 205
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker of the Assembly
State Capitol Building
Room 219
Sacramento, CA 95814

The Honorable Shannon Grove
Senate Republican Leader
State Capitol Building
Room 305
Sacramento, CA 95814

The Honorable Marie Waldron
Assembly Republican Leader
State Capitol Building
Room 3104
Sacramento, CA 95814

Dear Honorable Members:

The Peer Review Group (PRG) reporting to the legislature on the status of the high-speed rail project met with California High Speed Rail Authority (HSRA) staff in Oakland on July 22nd. Attending the meeting were PRG chair Lou Thompson and members Stacey Mortensen, Bijan Sartipi, Martin Wachs, Beverly Scott and Fred Jordan. Dr. Scott and Mr. Jordan were recently appointed by the Treasurer. Kome Ajise was absent. One position, an appointment of the Director of Finance, remains vacant. HSRA staff members, representatives of the Early Train Operator and consultants included: Brian P. Kelly (Director), Brian Annis, Joe Hedges, Tom Fellenz, Frank Vacca, Pam Mizukami, Jorge Rios, Sheila Dezarn, and Thierry Prate.

The PRG discussed with Authority staff the recent Project Update Report (PUR); changes in HSR plans and programs under Governor Newsom and new Authority Chair Lenny Mendonca; and addressed plans for preparing the 2020 Business Plan (BP). There was a thorough discussion of plans for the interim operation of the 119 mile section under construction in order

to comply with requirements of the federal grant obtained under the American Recovery and Reinvestment Act (ARRA). The shortest operational segment and the longer Merced to Bakersfield sections were reviewed and discussed. The PRG reviewed with staff forecasts of ridership demand and operating costs, and limits to their validity. The PRG urged staff to improve the estimates as much as possible while also understanding the limitations of estimates used for modeling purposes. The PRG strongly recommended to the staff a candid discussion of the limitations of these estimates and encouraged the staff to establish a clear narrative for the project's future and use the estimates to describe how that narrative could be realized. HSRA staff agreed.

The PRG understood and concurred with the staff intent to obtain from the interim section as much value for the public as possible within the scope allowed by limited funding. Acknowledging that initial interim operations, which HSRA staff reiterated is currently intended to be 171 miles of electrified, high-speed operations between Merced and Bakersfield, remained highly uncertain and that costs and operations could vary, it was agreed that the results probably would not produce sufficient revenue to cover operating costs, as noted in the 2019 Project Update Report (PUR), and that the 2020 BP should address accommodating this likely outcome. The funding of other state rail operations, including the ACE and San Joaquin services, could appropriately be addressed in conjunction with the initial interim operating segment. HSRA staff indicated that its Board has directed the development of a more refined business case for the early operating segment between Merced and Bakersfield, and that the staff is working to present that business case publicly to its Board in October, 2019.

Compliance with the ARRA grant was discussed. The PRG understands that federal requirements could be met by conventional rail passenger operations between Madera and Shafter. We understand that electrification of those operations or extending train operations so that they take place between Merced and Bakersfield, though desirable, is not required to comply with the terms of the federal grant. Staff and PRG also discussed the challenge to early operations posed by the Proposition 1A requirement that HSR operations be unsubsidized. PRG members agreed that there is an obligation to achieve unsubsidized HSR operations, but there was a focused discussion of different paths that could bring the program to that point while complying with existing laws and regulations. The HSRA believes that state-supported operators, such as ACE and the San Joaquin services, could be allowed to operate on the line as long as they are not directly operated by or subsidized by the HSRA. The line could be leased to an operator chosen by the state. This matter should be clarified by the legislature and addressed in the 2020 BP. HSRA staff agreed that the 2020 BP will address this issue in greater detail.

Performance measurement was discussed including review of the construction dashboard which was developed by staff in collaboration with the PRG. It was agreed that indicators should be clear and easily interpreted by people having diverse backgrounds. HSRA staff reported that from this point onward, the dashboard indicators will be reported to the public on a quarterly basis on the HSRA website at: https://hsr.ca.gov/about/legislative/arra_status_reports.aspx. State legislators and legislative staff and members of the public will be able to monitor progress regularly by referring to the dashboards. In addition, PRG staff will work with HSRA to add a summary report on progress in meeting SBE/DBE/DVBE goals in its contracting efforts.

The meeting included a review of the progress of construction and sources of delay and cost escalation. A major source of construction delay has been the complexity of property acquisition along with a recurrent problem of utility relocation, which depends heavily upon the agreements with and the participation of third parties. The HSRA staff has acknowledged publicly and at this meeting that a major lesson learned on this project is the complexity that has come with awarding a construction contract prior to substantial completion of right-of-way acquisition and execution of utility relocation. The new management team reiterated its determination not to repeat this mistake on future construction contracts. Despite past delays, the Authority believes, and review of the current dashboards suggests, that it can meet the ARRA deadlines although with little margin for error. The legislature should closely and continually monitor construction progress and watch carefully for any further delays.

The HSRA staff acknowledged the high profile criticism of the Agency from many quarters and asserted that senior managers are committed to implementing major improvements. The PRG urged that the 2020 BP acknowledge past problems and explicitly identify lessons learned from them and corrective actions taken. It urged the Authority to address improvements in efficiency, budgeting, and management. Expanded public outreach regarding progress to date and wider circulation of the dashboards will make progress more visible to many and contribute either to improving or threatening the reputation of the agency. There is no longer any room for any perceived lack of transparency and promises that are not kept. Again, the HSRA staff generally agreed with this approach and reiterated its commitment to transparency and improved organizational management and efficiency.

Staff reported that the HSRA intends to award a single contract for track work, signals and electrification between San Francisco and Bakersfield, including the segment to Merced. To provide control and accountability this large contract would then be broken into a number of segments and separate notices to proceed (NTP) would be issued based on progress made by the contractor. The first segment would be the track work and signaling from Madera to Shafter.

The PRG has two major concerns about the intended approach. First, the proposal should be discussed in detail to obtain agreement of the interim operator because of the interaction between construction planning and operations planning. Second, this proposal will, of necessity, constitute an extremely large and complex project, requiring diverse skills and lasting many years. We urge the Authority to present this plan in detail in the 2020 BP before making a final commitment to issuing such a large and complex contract. The PRG is not convinced that the Authority has acquired the staff, process changes, controls and resources to take on such a massive contracting challenge. In addition, large and complex contracts are often protested, and the time schedule to meet the ARRA requirements would be immediately threatened by such a protest. HSRA staff has agreed to continue conversations with the PRG on this contract process and has agreed to present this plan in greater detail in the 2020 BP.

The plan for the procurement of rolling stock was briefly discussed. The PRG observed that treatment of this issue has been limited and that we would benefit greatly from a deeper discussion of this matter at a future meeting prior to the issuance of the draft 2020 BP.

Two issues of great consequence for the Authority occurred shortly after our meeting. The first, briefly discussed at the meeting as likely to happen, was the assignment by the FRA of Environmental Impact Statement approval responsibility to the state. This will reduce delay and enhance efficiency of the Agency in coming months, though issues of permitting will remain.

The second issue, which was not discussed at the meeting, was the recent public reporting that the legislature is considering imposing a major restructuring of funding and project commitments related to HSR, including potential reallocation of funds for projects to the north and south of current construction activity. Though the discussion at the meeting was not informed by any knowledge of this possibility, we do strongly recommend to the legislature that proposals to make major changes in the project's scope or budgets should be subjected to detailed public examination and discussion before any final decisions are made and may be best timed to occur concurrently with the release of the 2020 BP.

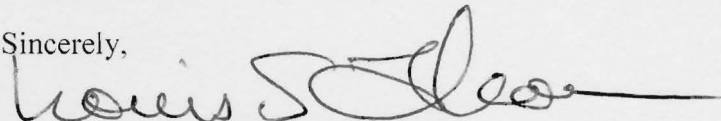
Without discussing these two important matters, the PRG did engage with staff in a discussion of possible approaches to insuring a future revenue stream, from Cap and Trade or other sources, for the Authority that would be sufficiently robust to allow borrowing to facilitate contracting for large capital investments. This remains a critical issue that needs resolution. The discussion included possibilities, for example, of legislation that would provide the authority with fixed dollar amounts from Cap and Trade funds rather than percentages, other potential taxes and fees, including possible value capture plans and the use of existing programs like opportunity zones and affordable housing funding in station areas to complement rail plans. The PRG noted that the development of such plans would be facilitated by greater attention to HSR in regional plans and by incorporating attention to them in the 2020 BP.

The meeting was very informative and the exchanges of information and opinions that took place were helpful. The PRG recognizes that the new Authority management is committed to performing its mission effectively and judiciously. The authority faces enormous challenges in the few months leading up to the drafting of the 2020 BP that will be an important milestone marking its progress. We urged the staff to be sure to avoid over promising in this critical document. In order to be more effective and to fulfill its legislative mandate, the PRG recommends that it meet frequently during these critical months with HSRA staff, with members and staff of the legislature, and with state officials who appointed the members of the PRG.

In the past, the PRG has reviewed and commented on early drafts of BPs as they were being developed. We were not afforded an opportunity to review or comment on the recent PUR prior to its publication and we offered to be available to contribute more actively to the development of the next BP, an offer well received by the HSRA staff.

Please feel free to contact me or the PRG if you have any questions about this report.

Sincerely,



Louis S. Thompson
Chairman, California High-Speed Rail Peer Review Group

cc: Hon. Jim Beall, Chair, Senate Committee on Transportation
Hon. Patricia C. Bates, Vice Chair, Senate Committee on Transportation
Hon. Jim Frazier, Chair, Assembly Transportation Committee
Hon. Vince Fong, Vice Chair, Assembly Transportation Committee
David S. Kim, Secretary, California State Transportation Agency
Gabriel Petek, State Legislative Analyst
Kate Gordon, Director, Governor's Office of Planning and Research
Lenny Mendonca, Chair, California High-Speed Rail Authority
Brian Kelly, Chief Executive Officer, California High-Speed Rail Authority
Members, California High-Speed Rail Peer Review Group