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Exempt from Filing Fees  
Pursuant to Government  
Code Section 6103

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE**

17 County of Kings, Citizens for California High ) CASE NO.:  
Speed Rail Accountability, Kings County )  
Farm Bureau )  
Petitioners, )  
v. )  
California High-Speed Rail Authority, and )  
DOES 1 through 20 )  
Respondents and Defendants. ) [California Environmental Quality Act  
("CEQA"), Public Resources Code, sections  
21000 et seq.; Proposition 1A, Streets and  
Highways Code section 2704.09; Anti-  
Discrimination Law, Government Code,  
section 11135; and Williamson Act,  
Government Code, sections 51200 et seq.]  
and ROES 1 to 10; )  
Real Parties in Interest. )  
28

## **INTRODUCTION**

1. By this Petition for Writ of Mandate (“Petition”), Petitioners seek to establish that Respondent California High-Speed Rail Authority (“the Authority”, or “Respondent”) violated the California Environmental Quality Act (Pub. Resources Code, §§ 21000 *et seq.*, (“CEQA”)), anti-discrimination law (Gov. Code, § 11135), the Williamson Act (Gov. Code, §§ 51200 *et seq.*), and Proposition 1A (Sts. & Hw. Code, § 2704.09), and in other ways abused its discretion and violated the law in approving the approximately 114-mile Fresno-to-Bakersfield section (“Section”) of the proposed 800-mile public transit project known as the High-Speed Train system (“Train System”).

2. The Section would consist of a broad swath of new train infrastructure through the heart of the Central Valley. The Section would ultimately cause extensive significant adverse impacts to, among other things, Central Valley agriculture, air quality, land use, aesthetics and visual resources, cultural resources, biological resources and wetlands, and parks and recreation resources, a hospital, churches, and hundreds of homes. Notably, a significant portion of the approved Section would deviate from existing transportation corridors such as Interstate 5, State Route 99, and the existing Burlington Northern Santa Fe Railway Company (“BNSF”) railroad tracks. The Section’s deviation from existing transportation corridors would result in the destruction of or substantial interference with thousands of acres of farmland (many of which are “prime,” “important,” or restricted by Williamson Act contracts) and wildlife habitat, established communities, many businesses, commercial properties and industrial facilities, existing roads, oil and water wells, and water delivery and drainage facilities.

3. The Authority failed to analyze alternatives that would altogether avoid or substantially reduce the identified impacts. It also failed to recirculate the environmental impact report (“EIR”) for the Section, even though significant new information about geotechnical impacts, Valley Fever, and interference with existing railroad lines, among other things, was not disclosed until after the draft EIR. In addition, the Authority revised the project to include additional elevated sections and other changes to the alignment without recirculating the EIR.

4. Through the EIR for the Section, the Authority acknowledged some of the

1 Section's significant impacts, but, due to numerous analytical deficiencies, failed to disclose and  
2 analyze the full scope and severity of these impacts to decisionmakers or to the public. The  
3 Authority also failed to incorporate a number of suggested feasible alternatives and mitigation  
4 measures to avoid the Section's adverse impacts on the Central Valley, as required by CEQA  
5 and Proposition 1A. Proposition 1A authorized funding for the Train System but placed  
6 significant restrictions on it including the requirements to follow existing transportation or  
7 utility corridors to the extent feasible, to minimize urban sprawl, and to minimize impacts on  
8 the natural environment. (Sts. & Hy. Code, § 2704.09.) The Authority's failure to analyze  
9 feasible alternatives and adequately mitigate impacts also resulted in its violating the  
10 Williamson Act and anti-discrimination law since feasible alternatives along existing  
11 transportation corridors would have avoided or reduced impacts to prime agricultural lands and  
12 disproportionate impacts to minority and low income populations. Therefore, the Authority's  
13 decision approving the Section must be set aside as contrary to law.

14 5. Petitioners request a peremptory writ of mandate ordering the Authority to set  
15 aside and void all of its Section approvals and to comply with all applicable legal requirements  
16 prior to taking further actions with respect to this Section of the Train System or the Initial  
17 Construction Section ("ICS"); and prohibiting the Authority from taking any further actions  
18 with respect to the Section and the ICS until it has complied with those legal requirements.

19 **JURISDICTION AND VENUE**

20 6. This Court has jurisdiction over the writ action under section 1094.5 of the Code  
21 of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

22 7. This Court also has jurisdiction over the writ action under section 1085 of the  
23 Code of Civil Procedure.

24 8. Venue is proper in this Court pursuant to Public Utilities Code section 185038.

25 **PARTIES**

26 9. The County of Kings ("Kings County") is a political subdivision of the State of  
27 California representing a population of approximately 153,000 people. Since it must issue well  
28 drilling and other discretionary permits for Section soil testing and other activities, Kings

1 County is a “responsible agency” as defined by CEQA. Kings County has long been concerned  
2 with the impacts of the Section within its jurisdiction and has repeatedly urged the Authority to  
3 coordinate its planning and environmental review for the Section. Kings County maintains that  
4 the Authority has failed to adequately coordinate and consult with Kings County officials and  
5 leaders. The Board of Supervisors for Kings County is responsible for regulating land use in all  
6 unincorporated areas within Kings County’s borders, and is charged with protecting the public  
7 health and safety and promoting the general welfare and quality of life of Kings County’s  
8 citizens. Kings County brings this action on its own behalf and on behalf of the residents and  
9 businesses within Kings County. The actions complained of herein threaten Kings County’s  
10 interests and the interests of those whom Kings County serves and impair Kings County’s  
11 ability to carry out its governmental functions. These interests and functions have been and will  
12 continue to be adversely affected by the Authority’s failure to comply with the applicable legal  
13 requirements prior to approving the Section.

14       10. Citizens for California High Speed Rail Accountability (“CCHSRA”) is a  
15 grassroots, non-profit corporation based in Kings County, California, working to ensure that the  
16 proposed Train System does not adversely affect the economy, environment, or the quality of  
17 life of California’s existing communities. CCHSRA’s members are California residents,  
18 farmers, business people, and landowners who are concerned that the Section will have  
19 significant negative impacts throughout the state, and particularly on natural resources and  
20 agricultural operations in the southern San Joaquin Valley. Some of CCHSRA’s members have  
21 lived, worked and farmed in the San Joaquin Valley for generations. Others have settled there  
22 more recently, but are equally committed to preserving the strength and vitality of existing  
23 farms, businesses and communities. Many members live and work in and around the City of  
24 Hanford, the county seat of Kings County, where the Section would have numerous adverse  
25 impacts on the established community, on agriculture, and by inducing sprawl growth east of  
26 Hanford. CCHSRA also has members and supporters who have property or reside in the  
27 communities of Fresno, Bakersfield, Wasco, Shafter, Corcoran, and Crome and will be  
28 adversely impacted by the Section’s community impacts, among others. Because of the Train

1 System's potential for extreme local, regional, and statewide environmental, economic, and  
2 social impacts, CCHSRA has actively engaged in the public review process related to the  
3 Authority's environmental analysis of Train System alignments and alternatives for several  
4 years. CCHSRA brings this proceeding on behalf of itself and its members, whose interests  
5 will continue to be adversely affected by the Authority's failure to comply with the applicable  
6 legal requirements prior to approving the Fresno-to-Bakersfield Section. CCHSRA also brings  
7 this proceeding on behalf of the general public, who will be similarly impacted by the Section  
8 unless the Authority completes adequate environmental review pursuant to CEQA and fully  
9 complies with anti-discrimination law, Proposition 1A, and the Williamson Act.

10       11. Kings County Farm Bureau is a California nonprofit corporation representing  
11 approximately 800 farm, ranch, and agribusiness families in Kings County. The purposes of  
12 the Kings County Farm Bureau include protecting agricultural lands in Kings County and  
13 preserving the agricultural heritage and rural character of Kings County. The Section directly  
14 threatens a substantial portion of those agricultural lands and indirectly impacts much more.  
15 The Kings County Farm Bureau brings this proceeding on behalf of itself and its members. The  
16 interests of the Kings County Farm Bureau and its members have been and will continue to be  
17 adversely affected by Respondent's failure to comply with the applicable legal requirements  
18 prior to approving the Section.

19       12. Respondent California High-Speed Rail Authority ("Authority") is, and at all  
20 times relevant to this proceeding was, an independent state authority established by the  
21 legislature in 1996. The Authority is responsible for planning, constructing and operating a  
22 high-speed train system to serve the Los Angeles to San Francisco mainline route as well as  
23 other major California cities. The Authority is governed by a nine-member board of directors.  
24 The Authority is the lead agency under CEQA for the Section and the Train System as a whole.  
25 The Authority, its staff, and contractors and consultants working under its control and direction  
26 prepared the environmental impact report for the Section. The Authority's board of directors  
27 certified the Final EIR and approved the Section.

28       13. Respondents DOES 1 through 20, inclusive, are sued under fictitious names.

1 Petitioners are ignorant of the true names and capacities, whether individual, corporate,  
2 governmental, or otherwise, of the Respondents named in this Petition as DOES 1 through 20,  
3 inclusive, and therefore sue these Respondents by these fictitious names. Petitioners will  
4 amend this Petition to allege their true names and capacities when ascertained. Petitioners are  
5 informed and believe, and based thereon allege, that each of these fictitiously named  
6 Respondents are responsible in some manner for the acts or omissions alleged herein.

7       14. Real parties in interest named as ROES I to X, inclusive, are given fictitious  
8 names because their names and capacities are presently unknown to Petitioners. Petitioners will  
9 amend this Petition to allege their true names and capacities when ascertained.

## **STATEMENT OF FACTS**

11        15. Petitioners re-allege and incorporate by reference the preceding paragraphs in  
12 their entirety, as though fully set forth herein.

3        16. The statewide Train System project has had a long and controversial history.  
4 Since the Section is part of this statewide project, that history impacts this case. Here,  
5 Petitioners briefly review the history of the statewide Train System project as well as the  
6 Authority's decision on the Fresno-to-Bakersfield Section of the Train System, challenged by  
7 this Petition for Writ of Mandate.

#### **A. Establishment of the California High-Speed Rail Authority.**

9       17. In 1993, Governor Pete Wilson signed Senate Concurrent Resolution 6, which  
10      established the California Intercity High-Speed Rail Commission to investigate the feasibility  
11      of implementing a high-speed rail system linking California's metropolitan areas. After  
12      completing several reports, the Commission published a 1996 final report recommending a  
13      system connecting the southern cities of Los Angeles and San Diego to the northern cities of  
14      San Francisco, Oakland, San Jose, and Sacramento, by way of the Central Valley.

18. In furtherance of this report, the Legislature enacted the California High-Speed  
Rail Act (Public Utilities Code §185000 *et seq.*) in 1996, which created the California High-  
Speed Rail Authority.

19. The California High-Speed Rail Act charged the Authority with implementing a

1 high-speed rail system connecting California's major metropolitan areas. Under the Act, the  
2 high-speed rail system would be "fully integrated with the state's existing intercity rail and bus  
3 network, consisting of interlinked conventional and high-speed rail lines and associated feeder  
4 buses. The intercity network in turn shall be fully coordinated and connected with commuter  
5 rail lines and urban rail transit lines developed by local agencies, as well as other transit  
6 services, through the use of common station facilities whenever possible."

7       20. In November 2008, California voters passed Proposition 1A, the Safe Reliable  
8 High-Speed Passenger Train Bond Act for the 21st Century ("Proposition 1A"), which  
9 authorized the issuance of \$ 9.95 billion in general obligation bonds for the Train System.

10      21. Proposition 1A also added section 2704.09 to the Streets and Highways Code,  
11 which contains rules for the financing and operation of the Train System.

12      22. Streets and Highways Code section 2704.09 states, "In order to reduce impacts on  
13 communities and the environment, the alignment for the high-speed train system shall follow  
14 existing transportation or utility corridors to the extent feasible" and "shall be planned and  
15 constructed in a manner that minimizes urban sprawl and impacts on the environment." (St. &  
16 Hy. Code, § 2704.09(g), (i).) Further, the Train System must be planned to "limit the extent to  
17 which the system may present an additional barrier to wildlife's natural movement" in order to  
18 preserve wildlife corridors and mitigate impacts to wildlife movement. (*Id.*, § (j).)

19 **B. The System-Wide Program EIR, Bay Area Program EIRs, and Other Project-Level  
20 Environmental Review Documents.**

21      23. A System-wide Program EIR/EIS ("Program EIR") was prepared for the  
22 statewide Train System and certified in November 2005. Due to the use of federal funding for  
23 the Train System, the Federal Railway Administration ("FRA") partnered with the Authority as  
24 the lead agency for purposes of National Environmental Policy Act ("NEPA") compliance.  
25 When certifying the Program EIR and approving the statewide Train System, the Authority and  
26 FRA deferred the decision concerning the Train System's route from the Bay Area to the  
27 Central Valley and the determination on the Train System's exact route through the Central  
28 Valley.

1       24. The Program EIR planned the Train System traveling north and south from  
2 Fresno to Bakersfield along State Route 99 or the BNSF railroad corridor. The FRA and  
3 Authority conducted public outreach workshops in Fresno, Tulare, and Kern Counties, but not  
4 in Kings County. The omission of Kings County from Program EIR outreach was likely due to  
5 the fact the planned Fresno-to-Bakersfield Section alignment did not pass through Kings  
6 County because it was proposed for State Route 99. Since Kings County was excluded from  
7 notification and workshops regarding the Program EIR, the public residing in or near Hanford,  
8 Lemoore, Corcoran, and Avenal and the communities of Armona, Stratford and Kettleman City  
9 were excluded for several years from notification and involvement in alignment planning.  
10 Later, in approximately 2010, planning emphasis shifted from the State Route 99 corridor to the  
11 BNSF Corridor, at which point Kings County had already been excluded from participation in  
12 early planning. Thus, by this time, Kings County participation in alignment planning had  
13 limited to no influence as the BNSF-centered route had already been selected. A later 2011  
14 Alternatives Analysis Report built upon the foundation of the 2005 Program EIR.

15       25. The Authority directed Authority staff to proceed with the preparation of a  
16 separate Program EIR for the Bay Area-to-Central Valley route and then prepare project-level  
17 EIR documents to provide detailed environmental review and identify more specific project  
18 alignments and station locations.

19       26. Following completion of the Bay Area Program EIR in 2008, a broad coalition of  
20 cities and organizations challenged this program-level document under CEQA. (*Town of*  
21 *Atherton et al. v. California High Speed Rail Authority*, Sacramento County Superior Court  
22 Case No. 34-2008-80000022-CU-WM-GDS) (“*Atherton I*”). The Court found the Bay Area  
23 Program EIR deficient in several respects, and directed the Authority to rescind its prior  
24 approvals for the Bay Area-to-Central Valley portion of the project and to revise the Program  
25 EIR to address the deficiencies.

26       27. In 2010, the Authority released a Revised Program Environmental Report for the  
27 Bay Area-to-Central Valley section of the Project. The Authority certified the Bay Area  
28 Revised Final Program EIR in September 2010.

1       28. A coalition comprised of substantially the same parties as the challengers to the  
2 original Bay Area Program EIR successfully challenged the Bay Area Revised Final Program  
3 EIR. (*Town of Atherton et al. v. California High Speed Rail Authority*, Sacramento County  
4 Superior Court Case No. 34-2010-80000679-CU-WM-GDS) (“*Atherton II*”). In November  
5 2011, the Court issued rulings in both the *Atherton I* and *Atherton II* cases that required  
6 substantial revisions to the Bay Area Program EIR. At the same time, the Court agreed with the  
7 Authority’s arguments that the first-tier Bay Area Program EIR was not required to analyze in  
8 detail some Train System impacts because later second-tier project-level EIRs would provide a  
9 more detailed level of impact analysis.

10      29. In early February 2012, the Court issued a Supplemental Peremptory Writ of  
11 Mandate, ordering the Authority to de-certify the Bay Area Program EIR and set aside its  
12 approvals for the Bay Area network alternative and alignment options.

13      30. In mid-April 2012, the Authority’s board of directors de-certified the Bay Area  
14 Program EIR and certified a Partially Revised Final Program EIR for the Bay Area-to-Central  
15 Valley section of the Train System.

16 **C. Long-Standing Plan to Construct the Initial Construction Section.**

17      31. In December 2010, the Authority approved funding (both federal and state) to  
18 construct what has become known as the “Initial Construction Section”, a 130-mile-long portion  
19 of the Train System that overlaps both the Fresno-to-Bakersfield Section and the neighboring  
20 Merced-to-Fresno section.

21      32. In March 2011, the Authority approved applying for additional available federal  
22 funds and proposed using those funds to extend the ICS further south toward the City of  
23 Bakersfield.

24      33. Despite knowing that it would actually construct portions of two neighboring  
25 Train System sections, the Authority only analyzed the impacts of constructing each section in  
26 isolation.

27 **D. Project-level Environmental Review of the Neighboring Merced-to-Fresno Section  
28 and Subsequent Lawsuits.**

1       34. A project level EIR was prepared for the portion of the Train System between  
2 Merced and Fresno and certified by the Authority on May 3, 2012. This EIR was challenged by  
3 Madera County, two farm bureaus, and individuals in *County of Madera v. California High*  
4 *Speed Rail Authority*, Sacramento County Superior Court Case No. 34-2012-80001165. The  
5 challenge resulted in a settlement. Two related cases were also resolved prior to trial through  
6 settlement.

7       **E. Additional Court Proceedings Related to Approval and Construction of the Train**  
8       **System.**

9       35. Proposition 1A required strict financial and design parameters before expending  
10 bond funds to construct the Train System. The Authority approved a funding plan in November  
11 2011. Pursuant to Proposition 1A, the Funding Plan was required to address the 300-mile  
12 Authority-identified “Initial Operating Section” from Madera to Palmdale (the first “usable  
13 segment” selected by the Authority in its 2012 Business Plan) and to “identify sources of funds  
14 that were more than merely theoretically possible.”

15       36. In July 2012, the County of Kings and several individuals filed a lawsuit alleging  
16 violations of the provisions of Streets and Highways Code section 2704, added to California  
17 law by the passage of Proposition 1A (“Proposition 1A Complaint”). Plaintiffs alleged that the  
18 Authority had approved an illegal funding plan and failed to obtain required environmental  
19 clearances, among other allegations. (*John Tos v. California High Speed Rail Authority*,  
20 Sacramento County Superior Court Case No. 34-2011-00113919.)

21       37. In August 2013, the Superior Court for the County of Sacramento concluded that  
22 the Authority abused its discretion by approving a funding plan that did not comply with the  
23 requirements of Proposition 1A. Specifically, the Court found that the Authority failed to  
24 identify “the sources of all funds to be invested in the IOS [Initial Operating Section]” and  
25 failed to make required “certification regarding completion of necessary project level  
26 environmental clearances.” (August 16, 2013 Ruling on Submitted Matter, *Tos et al. v.*  
27 *California High Speed Rail Authority*, Sacramento Superior Court Case No. 34-2011-  
28 00113919-CU-MC-GDS, p. 7.)

1       38. The Court issued a writ of mandate directing the Authority to rescind its approval  
2 of the November 2011 Funding Plan. (*John Tos v. California High Speed Rail Authority*,  
3 Sacramento County Superior Court Case No. 34-2011-00113919, Ruling on Submitted Matter:  
4 Remedies on Petition for Writ of Mandate, November 25, 2013, 6:8-12.)

5       39. In March 2014, the Authority failed to obtain a judgment on the pleadings to  
6 defeat the balance of the Proposition 1A Complaint. The remainder of the Proposition 1A  
7 Complaint will soon proceed to trial. There, the Superior Court will determine whether the  
8 Train System's design complies with Proposition 1A. (*John Tos v. California High Speed Rail*  
9 *Authority*, Sacramento County Superior Court Case No. 34-2011-00113919, Ruling on  
10 Submitted Matter: Motion For Judgment on the Pleadings, March 4, 2014, 3:8 to 4:6-16.)

11       40. Earlier, on March 18, 2013, the Authority adopted a resolution asking the High-  
12 Speed Passenger Train Finance Committee to authorize the issuance of nearly \$8 billion of  
13 bond funds under Proposition 1A. The High-Speed Passenger Train Finance Committee did so.  
14 Shortly thereafter, the Authority filed an action to validate the bonds approved by the  
15 committee.

16       41. The Sacramento County Superior Court, however, declined to validate the  
17 issuance of the bonds on the ground that no evidence before the committee supported that the  
18 issuance of bonds was necessary and desirable. (*High Speed Rail Authority v. All Persons*  
19 *Interested*, Sacramento County Superior Court Case No. 34-2013-00140689, Ruling on  
20 Submitted Matter: Complaint for Validation of Bonds, November 25, 2013, 14:9-19 and 19:20-  
21 20:15.)

22       42. The Authority appealed the validation proceedings to the Third District Court of  
23 Appeal, Case No. C075932. Oral argument in this case was held on May 23, 2014, and the  
24 Court has taken the matter under submission.

25       43. Concurrently on May 23, 2014, the Third District Court of Appeal held a hearing  
26 on an extraordinary writ filed by the Authority regarding compliance with Proposition 1A.  
27 (*California High-Speed Rail Authority v. Superior Court of Sacramento County (Tos)*, Case No.  
28 C075668.) A decision on this matter has not been issued.

1       **F. Other Kings County Proceedings Related to the Fresno-to-Bakersfield Section of**  
2       **the Train System.**

3       44. As a responsible agency under CEQA, Kings County must rely on the Authority's  
4 EIR for its issuance of well drilling permits for the Section soil testing and other discretionary  
5 permits; challenge the EIR in court within 30 days of the filing of a notice of determination; or  
6 prepare a subsequent EIR if permissible. (Cal. Code Regs, tit. 14 ("CEQA Guidelines"), §  
7 15096 (e).)

8       45. In May 2013, prior to its certification of an EIR for the Section, the Authority  
9 sought permission to enter 58 properties in Kings County to conduct soil testing and boring  
10 operations. Kings County directed the Authority to obtain an encroachment permit.

11       46. In June 2013, Kings County rejected the Authority's encroachment applications  
12 as incomplete and sought additional information. The Authority submitted a revised  
13 application in July 2013.

14       47. On August 16, 2013, Kings County denied the Authority's application for  
15 encroachment permits, finding that the requested work furthered the Section and Train System,  
16 for which the Authority had not yet submitted an application to Kings County and which was  
17 inconsistent with the governing County General Plan. Further, the Authority had not yet  
18 completed environmental review for the Section, even though Kings County must rely on the  
19 Authority's environmental review to issue the drilling permits.

20       48. On March 13, 2014, the State Public Works Board, acting on behalf of the people  
21 of the State of California and with authorization from the Authority, commenced an action  
22 against the County of Kings to enter County land for purposes related to acquisition of property  
23 for Train System purposes. (*People v. County of Kings*, Kings County Superior Court Case No.  
24 14-C0062.)

25       49. The State Public Works Board's petition was filed pursuant to Code of Civil  
26 Procedure section 1245.010, which it claims authorizes the Authority to enter Kings County  
27 property to make photographs, studies, surveys, examinations, tests, soundings, borings,  
28 samplings, or appraisals or to engage in similar activities related to acquisition or use of the

1 property for the statewide Train System.

2       50. The State Public Works Board seeks to perform geotechnical borings and tests of  
3 58 Kings County-controlled parcels to determine subsurface soil, rock, and groundwater  
4 conditions. Some of the required borings would extend 200 feet below ground surface at 6.5  
5 inches in diameter.

6       51. Kings County opposed the State Public Works Board's petition. On May 23,  
7 2014, at the conclusion of a hearing, the Kings County Superior Court issued an order stating,  
8 "The papers and arguments establish that petitioner has satisfied all legal requirements for  
9 granting the petition. County's papers and arguments establish no impediments to granting the  
10 petition." Kings County will be appealing the order and seeking a stay and, alternatively, filing  
11 a petition for writ of mandate challenging the order as incorrect as a matter of law since the  
12 facts are undisputed. The Court did not address the recent binding authority of *Property*  
13 *Reserve, Inc v. Superior Court* (2014) 224 Cal.App.4th 828 or state a basis for its ruling other  
14 than what was stated in its order.

15 **G. The Authority Reviews and Approves the Fresno-to-Bakersfield Section.**

16       52. For the Fresno-to-Bakersfield Section of the Train System, the Authority and  
17 Federal Railroad Administration conducted simultaneous CEQA and NEPA review. The  
18 Federal Railroad Administration review is ongoing. The Record of Decision has not yet been  
19 issued.

20       53. The Authority released a Draft EIR/EIS (hereinafter "Draft EIR") for the Section  
21 on August 12, 2011. A 60-day public comment period for it ended October 13, 2011.

22       54. In response to comments received from federal agencies and others on the Section  
23 alternatives, the Authority revised the Draft EIR to include additional route and station  
24 variations on the original alignment. Specifically, the Authority added new alignment  
25 variations and station locations west of Hanford, an additional variation through Bakersfield,  
26 and alterations to the existing Fresno-to-Bakersfield alignment. However, the Authority did not  
27 add alternative corridors outside the original proposed corridor alignment such as along  
28 Interstate 5 or Highway 99, nor did the Authority analyze alternative designs of the proposed

1 alignment such as tunneling or trenching in urban areas.

2       55. The Revised Draft EIR/EIS (“hereinafter Revised Draft EIR”) was released in  
3 July 2012. The public comment period began on July 20, 2012 and was extended to October  
4 19, 2012.

5       56. Members of the public submitted over 2,255 comments on the Section during the  
6 comment periods for the Draft EIR and Revised Draft EIR.

7       57. In October and November 2013, Petitioners submitted letters to the Authority  
8 highlighting new information regarding Section-wide geotechnical and other impacts that had  
9 become apparent from Authority consultants’ reports and other documents that had been  
10 obtained pursuant to the Public Records Act but had not been identified in any earlier analysis.  
11 Petitioners requested that the Authority supplement its environmental analysis with the new  
12 information and recirculate it for public review.

13       58. On January 31, 2014, in a separate proceeding before the California Public  
14 Utilities Commission (“CPUC”), Union Pacific Railroad Company (“UPRR”) and BNSF  
15 Railway Company (“BNSF”) identified the need for analysis of electromagnetic impacts from  
16 the Train System that could significantly interfere with the safe operations of BNSF and UPRR  
17 trains. UPRR and BNSF made their comments in a document entitled, “Joint Comments Of  
18 Union Pacific Railroad Company And BNSF Railway Company To The Technical Panel  
19 Report,” in a CPUC proceeding entitled, “Order Instituting Rulemaking Regarding Whether to  
20 Adopt, Amend, or Repeal Regulations Governing Safety Standards for the Use of 25kV Electric  
21 Lines to Power High Speed Trains.” The EIR stated that electromagnetic interference on  
22 adjacent rail lines “would be of negligible intensity” and “less than significant.” The filing of  
23 comments by BNSF and UPRR showed they did not agree with this statement. The EIR did not  
24 mention that the Authority petitioned the CPUC to adopt proposed regulations regarding  
25 electromagnetic interference, or that the BNSF and UPRR opposed the proposed regulations.

26       59. The Final EIR/EIS (“Final EIR”) was released by the Authority on April 18,  
27 2014. The Final EIR contained many pages of new information in a substantially revised  
28 environmental impact analysis and in the Responses to Comments. This new information

1 included new potentially significant impacts on additional agricultural lands, environmental  
2 justice communities, the Kern River Parkway, Mill Creek Linear Park, and McMurtrey Aquatic  
3 Center in Bakersfield, among other newly disclosed impacts.

4       60. After release of the Final EIR, several individuals, including members of  
5 CCHSRA, were notified by the Authority that their comments and the Authority's responses to  
6 those comments had been inadvertently omitted from the Final EIR.

7       61. Released just days before the May 6-7, 2014 Board meeting, the CEQA Findings  
8 and Statement of Overriding Considerations for the Section would override significant and  
9 unavoidable impacts in the categories of noise and vibration, socioeconomics, communities,  
10 and environmental justice, agricultural lands, aesthetics and visual resources, cultural resources,  
11 and cumulative impacts. The Statement of Overriding Considerations overrode these allegedly  
12 unmitigable adverse impacts based on the Section's purported greenhouse gas reduction  
13 benefits, and benefits related to the Train System's potential use for conventional passenger  
14 rail, as a high-speed test track, among others.

15       62. The public hearing on the Section's approval was scheduled for the May 6-7,  
16 2014 meeting of the Authority.

17       63. On May 5, 2014, the Authority applied to the San Joaquin Valley Air Pollution  
18 Control District for an Indirect Source Review permit, the first step to preparing a Voluntary  
19 Emissions Reduction Agreement to mitigate adverse air pollution impacts during construction  
20 and operation. The application disclosed for the first time that 70 miles of the 114-mile Section  
21 (the portions of the Section within what is known as Construction Package ("CP") 1c, CP2, and  
22 CP3) would require 24 million cubic yards of imported fill dirt. This contrasted sharply with  
23 EIR's disclosure that only 11.3 million cubic yards of fill dirt would be needed for the entire  
24 Section. The application thus demonstrated that the EIR substantially underestimated the  
25 amount of fill dirt required for the Section and the associated impacts caused by excavating,  
26 transporting, screening, spreading, and compacting the additional amount of fill dirt.

27       64. At the May 6, 2014 Authority Board hearing, numerous aggrieved individuals,  
28 businesses, local government agencies, and groups spoke in opposition to the Section's

1 approval. Members of CCHSRA and counsel and representatives of CCHSRA, the County of  
2 Kings, and the Kings County Farm Bureau voiced concerns related to, among other things, the  
3 short time period for reviewing the extensive new information presented in the Final EIR, the  
4 changes to the Section's alignment through the Hanford area, destruction of productive  
5 agricultural lands, the failure to analyze the impacts of constructing the ICS, the failure to  
6 analyze the Section's cumulative impacts, and the Authority's failure to mitigate other adverse  
7 impacts of the Section.

8       65. In spite of these concerns, the Board of Directors of the Authority voted to certify  
9 the EIR and approve a portion of the Section, from Mariposa Street in Fresno to 7th Standard  
10 Road, northwest of Bakersfield, on May 7, 2014.

11       66. The approved alignment for the Section is comprised of what the EIR refers to as  
12 the BNSF alternative, the BNSF Alternative – Hanford East, the Corcoran Bypass alternative,  
13 the Allensworth Bypass alternative, and the Bakersfield Hybrid alternative. A Train System  
14 station would be located on Truxtun Avenue in downtown Bakersfield, with an optional station  
15 located east of Hanford and west of Visalia near State Route 198.

16       67. Specifically, the approved Section alignment begins in downtown Fresno and  
17 follows the existing BNSF tracks south to Laton, diverging east of the BNSF tracks at the Kings  
18 River. The alignment passes through agricultural lands east of Hanford, bypassing Corcoran to  
19 the east, but otherwise following State Route 43. South of Corcoran, the alignment bypasses  
20 Allensworth to the west and rejoins the BNSF alignment west of McFarland. From there, the  
21 alignment follows the BNSF tracks south through Wasco and Shafter before turning east at the  
22 Kern River toward Bakersfield.

23       68. The Authority approved a Memorandum of Understanding with the San Joaquin  
24 Valley Air Pollution Control District on May 7, 2014. However, a Voluntary Emissions  
25 Reduction Agreement has not yet been disclosed to the public or approved.

26       69. The Authority posted a Notice of Determination pursuant to CEQA on May 8,  
27 2014.

28       70. On May 16, 2014, the Authority provided a notice of public acquisition of

1 Williamson Act lands (lands subject to preservation contracts under the Williamson Act) for the  
2 Fresno-to-Bakersfield Section of the Train System to the California Department of  
3 Conservation. The notice included maps of agricultural lands to be taken or impacted by the  
4 Section. Although the maps were apparently produced in March 2014, they were not included  
5 in the EIR or elsewhere in the review process for the Section before the May 7, 2014 approval.  
6 CCHSRA and others had requested that such maps be made available so that the public could  
7 determine which severed remainder parcels (i.e., parcels created as the Section divided existing  
8 parcels) were determined to be “uneconomic”, i.e., not viable for continued agricultural  
9 production. The maps revealed a number of very small, oddly shaped, and/or isolated  
10 agricultural remainder parcels that will likely be uneconomic but were not counted as directly  
11 impacted by the Section. The Authority acknowledged in this letter that, because of changes to  
12 the Section’s preferred alignment and roadway overpass expansions, twenty-seven (27) new  
13 Williamson Act contracts for preservation of parcels of agricultural land would be impacted.  
14 These impacts had not been previously identified. The Williamson Act contracts for these 27  
15 parcels were provided as an attachment to the Authority’s May 16, 2014 letter.

## **EXHAUSTION OF ADMINISTRATIVE REMEDIES AND INADEQUATE REMEDIES AT LAW**

18       71. Petitioners objected to the Section and the adequacy of its environmental review  
19 at every stage of the administrative process, and fully exhausted their administrative remedies.  
20 Petitioners appeared at various public hearings and submitted written comments raising the  
21 issues set forth herein.

22       72. Petitioners have no plain, speedy or adequate remedy in the course of ordinary  
23 law unless this Court grants the requested writs of mandate and injunctive relief. In the absence  
24 of such remedies, the California High-Speed Rail Authority's approval of the Fresno-to-  
25 Bakersfield Section of the Train System would proceed in violation of state law.

26       73. Petitioners have complied with Public Resources Code section 21167.7 by filing a  
27 copy of this petition with the California Attorney General. A copy of that notice is attached as  
28 Exhibit A.

1       74. Petitioners have complied with Public Resources Code section 21167.5 by  
2 providing the Authority with notice of intention to commence the action. A copy of that notice  
3 is attached as Exhibit B.

4       75. Petitioners elect to prepare the administrative record. A copy of that election is  
5 attached as Exhibit C. Petitioners have already obtained many of the documents necessary for  
6 the administrative record preparation from the Authority and other public agencies.

## **FIRST CAUSE OF ACTION**

**(VIOLATIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT  
AND STREETS AND HIGHWAYS CODE)**

10        76. Petitioners re-allege and incorporate by reference the preceding paragraphs in  
11 their entirety, as though fully set forth herein.

12        77. CEQA requires the Authority to conduct adequate environmental review prior to  
13 making any formal decision regarding projects subject to the Act. (CEQA Guidelines, §  
14 15004).

15        78. CEQA imposes upon the Authority a clear, present and mandatory duty to certify  
16 an EIR only if the EIR fully discloses to the public the significant environmental effects that  
17 may occur due to implementation of a project and only if all feasible alternatives and mitigation  
18 measures have been incorporated to avoid or reduce these impacts. The EIR lacked the  
19 necessary analysis and mitigation.

20        79. Further, as the Authority did not adequately respond to many of the public  
21 comments regarding these impacts, the Final EIR also failed to provide an adequate analysis of  
22 impacts. These impacts include, but are not limited to, the following:

#### **A. Inadequate Project Description.**

24        80. Every EIR must contain a project description of a “project’s technical, economic,  
25 and environmental characteristics.” (CEQA Guidelines, § 15124(c)). An EIR “is an  
26 informational document” that must be “prepared with a sufficient degree of analysis to provide  
27 decisionmakers with information which enables them to make a decision which intelligently  
28 takes account of environmental consequences.” (CEQA Guidelines, §§ 15121, 15151.) CEQA

1 requires the analysis of potential impacts to be “reasonably thorough” and specific at the project  
2 level. CEQA Guidelines, section 15146 states “[t]he degree of specificity required in an EIR  
3 will correspond to the degree of specificity involved in the underlying activity which is  
4 described in an EIR.”

5       81. Accordingly, a project description must be sufficiently detailed for full  
6 environmental impact analysis. (CEQA Guidelines, § 15124.)

7       82. An EIR’s project description must also be stable and finite.

8       83. The Authority reviewed the Section as a “design-build” project. According to the  
9 Final EIR, only fifteen to thirty percent (15 to 30%) of the Section’s design was completed  
10 prior to certification of the Final EIR. The Final EIR does not specify which Section elements  
11 have progressed to the higher level of design. The Section’s final design would be completed at  
12 a future time, by a contractor who has not yet been chosen. Examples of necessary information  
13 that would not be determined until later in the future include, but are not limited to: (1)  
14 information about necessary changes to existing electric infrastructure and new infrastructure to  
15 connect to the electricity grid, (2) the locations of construction staging areas and concrete batch  
16 plants, (3) the design of stations and parking facilities, and (4) temporary freight railroad tracks  
17 that are necessary to avoid impacts to freight railroad operations on nearby BNSF railroad  
18 tracks, known as “shoofly” tracks. The Final EIR acknowledged the possibility of shoofly track  
19 construction, but did not analyze the impacts of their construction or temporary operation.

20 BNSF pointed out this deficiency in its comments on the Final EIR.

21       84. The EIR deferred key infrastructure decisions until after Section approval, thus  
22 preventing informed analysis of their impacts. Pursuant to the Authority’s own fifteen percent  
23 design guidelines, the electric infrastructure improvements required for the Section are part of  
24 the “minimum” information necessary to conduct an adequate environmental review. The Final  
25 EIR does not satisfy the Authority’s own minimum informational requirements.

26       85. According to the Authority’s predecessor agency, the Intercity High Speed Rail  
27 Commission, in its High Speed Rail Summary Report and Action Plan, at least a thirty-five  
28 percent (35%) level of design is necessary to conduct environmental review. Similarly, the

1 U.S. Army Corps of Engineers and U.S. Environmental Protection Agency state that a sixty  
2 percent (60%) level of design is necessary for the environmental analysis to be sufficient for  
3 issuing a Clean Water Act section 404 Permit. By relying on an insufficiently detailed design,  
4 the Authority failed to provide enough information necessary for environmental review under  
5 CEQA.

6 86. The vague nature of the Section's design also led to inconsistencies in project  
7 design information between the revised Draft EIR, the Final EIR, and applications for necessary  
8 permits that misled the public. For example, the Final EIR stated that the Section would require  
9 11,300,000 cubic yards of fill material while the Authority's Indirect Source Review  
10 application to the San Joaquin Valley Air Pollution Control District (submitted after release of  
11 the Final EIR) states that the section will require 24,000,000 cubic yards of fill material. By  
12 substantially underestimating the amount of dirt that will be imported to construct elevated  
13 earthen berms and other Section structures, the Final EIR grossly understated the associated  
14 environmental impacts and therefore misinformed the public and decisionmakers.

15 87. The EIR does not address all of the inconsistencies between the Section's design  
16 and the assumed design of the statewide Train System, as described and analyzed in the 2005  
17 Program EIR. For example, the EIR does not address the inconsistency between the Section's  
18 120-foot-wide at-grade right-of-way, the 50-foot-wide right-of-way assumed in the Program  
19 EIR, and the assumption that the Section could be built within the existing freight railroad right-  
20 of-way. The Section's larger right-of-way that will not encroach on freight railroad right-of-  
21 way will result in substantially more severe impacts than those analyzed and disclosed at the  
22 Program EIR level.

23 88. Further, upgrades to existing grid infrastructure and new electric infrastructure are  
24 reasonably foreseeable consequences of the Section, the Initial Operating Section, and the ICS.  
25 The EIR's failure to disclose these necessary improvements results in its failure to analyze and  
26 mitigate the potential impacts of their implementation.

27 89. As a result of the incomplete Section design, the EIR fails to disclose exactly  
28 where the train would run, how much land will be required for construction and operation, and

1 the severity of its actual, on-the-ground impacts.

2       90. When previously undisclosed information about geotechnical impacts and Section  
3 design changes that created significant impacts became available from technical reports  
4 released by consultants for the Authority, the Authority failed to recirculate the EIR for review  
5 and comment.

6       91. The lack of an adequate project description renders adequate analysis of the  
7 Section's environmental impacts impossible. The EIR's project description fails to satisfy  
8 CEQA.

9 **B. Improper Piecemealing of Environmental Analysis.**

10     92. CEQA requires that environmental review documents analyze "the whole of an  
11 action." (CEQA Guidelines, § 15378.) California courts have strictly enforced CEQA's  
12 prohibition on "piecemealing," to ensure that the EIR passes muster as a document that  
13 provides "adequacy, completeness, and a good faith effort at full disclosure." (CEQA  
14 Guidelines, §§ 15378, 15151.) Courts have mandated such an approach to ensure that  
15 environmental considerations not become submerged by chopping a large project into many  
16 little ones, each with a potential impact on the environment, which cumulatively may have  
17 disastrous consequences.

18     93. The Authority prejudicially abused its discretion, in violation of CEQA, by failing  
19 to consider the entire ICS, as a whole, in the EIR. Read together, Proposition 1A and the  
20 Federal Railroad Administration require the Authority to construct a "usable segment" with  
21 "independent utility," which in this case is the ICS. By analyzing the impacts of the arbitrarily  
22 defined Section in isolation from the contributing impacts of the 24-mile portion of the  
23 neighboring Merced-to-Fresno section, the Authority denied the public and decisionmakers the  
24 information concerning the impacts of the ICS as a whole. The 2005 Program EIR also failed  
25 to analyze the ICS, since it relied on inaccurate assumptions concerning the Train System's  
26 right-of-way and deferred such analysis to later review.

27     94. CEQA requires the analysis of reasonably foreseeable future expansions or  
28 actions as part of the "whole of the project" that must be analyzed in an EIR.

1       95. The EIR fails to analyze the impacts associated with using the Section for Amtrak  
2 service and as a track for testing of high-speed trains. Because the Authority announced that  
3 such foreseeable uses of the Section were contemplated to meet federal funding “independent  
4 utility” requirements, and because the statement of overriding considerations adopted by the  
5 Authority relies on such foreseeable uses as Section benefits justifying its adverse impacts, the  
6 uses are reasonably foreseeable future actions that were required to be considered in the EIR.

7       96. The EIR’s omission of these feasible alternative uses has led to its failure to  
8 properly analyze and mitigate the Section’s significant and adverse environmental impacts,  
9 most notably its cumulative impacts.

10 **C. Failure to Adequately Disclose, Analyze, and Mitigate Impacts.**

11       97. An EIR must provide adequate, complete, and full disclosure of the  
12 environmental impacts of a proposed project. (CEQA Guidelines, § 15151.)

13       98. Concrete, enforceable mitigation measures must be “required in, or incorporated  
14 into” a project. (Pub. Resources Code, § 21081 (a)(1).)

15       99. An EIR must evaluate the efficacy of mitigation measures in order to properly  
16 disclose to decisionmakers and the public a project’s environmental costs. For this reason, the  
17 adoption of deferred, vague, or inadequate mitigation measures violates CEQA.

18       100. Deferral of the analysis of the feasibility and adoption of mitigation measures also  
19 violates CEQA.

20       101. The EIR for the Section includes numerous impact areas in which the necessary  
21 impact disclosure was omitted and the adoption of concrete, enforceable mitigation measures  
22 was improperly deferred in violation of CEQA, including, but not limited to, the following:

23       **1. Agricultural Resources Impacts**

24       102. The EIR’s analysis of the Section’s impacts to agricultural resources is  
25 incomplete and relies on improper deferral of effective mitigation measures.

26       103. State statutes expressly protect agricultural lands. (See Pub. Resources Code, §  
27 21095; see also CEQA Guidelines, Appendix G(II); Cal. Land Conservation Act of 1965  
28 (Williamson Act), Gov. Code, § 51200 et seq.; Cal. Farmland Conservancy Program Act, Pub.

1 Resources Code, § 10200 et seq.) Recognizing the importance of agriculture to the economy of  
2 the State of California, the Williamson Act was enacted to maintain agricultural uses on the  
3 state's agricultural land. CEQA requires careful impact analysis concerning agricultural  
4 resources.

5       104. One of the Section's greatest adverse impacts is the loss of prime agricultural land  
6 and other important farmland. Excluding the proposed Heavy Maintenance Facility, the EIR  
7 admits construction of the Section would remove 3,541 acres of important farmland from  
8 agricultural production.

9       105. However, the Final EIR underestimated these impacts by failing to adequately  
10 consider parcels of agricultural land that would be separated from access routes and adjacent  
11 farmland by the Section's 120-foot-wide at-grade right-of-way. The 120-foot-wide at-grade  
12 right-of-way is a significant departure from the 50-foot-right-of-way contemplated in the 2005  
13 Program EIR, and creates additional significant impacts. Further, the 2005 Program EIR  
14 explicitly deferred all analysis of parcel severance. Because the Final EIR did not disclose how  
15 it applied various factors to determine whether agricultural operations could continue on these  
16 severed "remainder parcels" and did not disclose which of these severed parcels were counted  
17 toward the 3,541-acre total and why, the EIR's conclusion that the Section would only impact  
18 3,541 acres of important agricultural lands omits key information. Since the Final EIR  
19 downplays the Section's impacts on agricultural lands, it cannot adequately mitigate those  
20 impacts.

21       106. The EIR also fails to consider the frontage roads adjacent to agricultural parcels  
22 that are used to turn around farm equipment.

23       107. The Final EIR also failed to identify remnant parcels that would be created as the  
24 Section cuts through existing agricultural parcels. The Final EIR could not fully disclose the  
25 Section's impacts to the public and decisionmakers without disclosing these remnant parcels in  
26 its analysis. The EIR also failed to disclose the percentage of those parcels that were  
27 determined to be "directly impacted lands", those that were not, and the reasons for each  
28 determination. Commenters requested these explanations and maps depicting the noneconomic

1 and economic remainder parcels before the Final EIR was released, but the Authority refused to  
2 provide the information and maps.

3       108. The Final EIR also fails to consider long-term impacts to agricultural lands  
4 caused by the severance of utilities and infrastructure caused by the Section. Construction and  
5 operation of the Section may separate irrigation and drainage canals and internal access roads  
6 from agricultural lands for prolonged periods, rendering them unusable and potentially  
7 destroying permanent crops such as orchards.

8       109. Mitigation incorporated into the Section, such as financial compensation, may be  
9 ineffective in preserving agricultural use since severing facilities could fundamentally  
10 compromise the viability of agriculture on these properties.

11       110. The Authority claimed that a detailed analysis of the impacts caused by parcel  
12 severance could not be performed due to the many local and parcel-specific factors that  
13 determine whether a severed parcel would remain economically viable for farming. This stance  
14 contradicts the Authority's previous statement, contained in the 2005 Program EIR, that  
15 detailed severance analysis would be addressed in project-level EIRs. The 2005 Program EIR  
16 stated, "Potential severance locations are discussed qualitatively, not quantitatively, in this  
17 program-level document. Parcel-specific information is also not considered in this program-  
18 level analysis. Project-level farmland conversion and severance impacts that are determined to  
19 be significant adverse impacts would be addressed in subsequent project-level documents."

20       111. By failing to consider all severance impacts, the Final EIR underreported impacts  
21 to agricultural lands, making even the limited mitigation adopted less effective.

22       112. The Authority failed to consider potentially feasible mitigation measures, raised  
23 by commenters, to reduce direct, indirect, and cumulative impacts to agricultural lands. One  
24 potentially feasible measure involves enhancing lands to make them more productive for  
25 agriculture and offset acreage that may be lost during Section construction and operation.  
26 Enhancement could involve remediating salt and selenium-contaminated soils, introducing  
27 water supplies to properties without them, and drilling and deepening groundwater wells.

28       113. Since the Authority failed to analyze and require these and other potentially

1 feasible mitigation measures, it failed to proceed in a manner required by law.

2       **2. Air Quality Impacts**

3       114. The EIR's analysis of air quality impacts was deficient in many respects,  
4 including, but not limited to, the following:

5       115. The EIR fails to sufficiently analyze the cumulative air quality impacts of the  
6 Section.

7       116. The Final EIR failed to analyze the Section's construction-period air quality  
8 cumulative impacts in conjunction with constructing the northern 24 miles of the ICS. The  
9 Final EIR incorrectly analyzed only the construction-phase air quality impacts generated within  
10 the Section footprint. Although the EIR's Cumulative Impact analysis states that the EIR  
11 considered the air quality impacts of constructing neighboring sections of the Train System, the  
12 Air Quality Technical Report fails to even mention the ICS.

13       117. The Final EIR reduced the Section's expected greenhouse gas ("GHG")  
14 elimination benefits by nearly half, but it was not recirculated for public review. The Draft EIR  
15 estimated that the Section would reduce statewide CO<sub>2</sub> emissions by 5.3 million to 6.3 million  
16 metric tons per year due to reductions in automobile vehicle miles traveled (VMT). After an  
17 expert commenter demonstrated that the Authority overstated these reductions by effectively  
18 assuming little or no improvement in automobile fuel economy between 2012 and 2035, the  
19 Final EIR revised its forecast of CO<sub>2</sub> emissions benefits due to reduced VMT *downward* to  
20 between 1.9 million and 2.8 million metric tons per year, a 67% reduction. Providing realistic  
21 estimates of the CO<sub>2</sub> benefits from operation of the Section would have allowed the public to  
22 determine whether these environmental benefits are large enough to warrant the significant  
23 environmental impacts the public will have to bear during Section construction and initial  
24 operation. The Authority's failure to recirculate the EIR misled the public about the Section's  
25 benefits.

26       118. The Section's compliance with CEQA and state and federal air quality laws  
27 depends on the San Joaquin Valley Air Pollution Control District and Authority's agreement on  
28 a Voluntary Emissions Reduction Agreement (VERA) because the EIR's air quality analysis

1 depends upon this measure for mitigation of construction air quality impacts. However, no  
2 VERA was approved prior to certification of the EIR, nor was such a document disclosed to the  
3 public.

4       119. Thus, the VERA could not be evaluated by the public or decisionmakers to  
5 determine its potential effectiveness, and the Section's construction air quality mitigation has  
6 been improperly deferred.

7       120. The Final EIR's analysis of GHG emissions during construction and associated  
8 mitigation measures failed to include the GHG emissions from the production of materials used  
9 in construction. Concrete production creates very high GHG emissions. Concrete produced for  
10 the Section may result in emissions high enough to offset twenty to thirty years of the Section's  
11 GHG-reduction benefits. If properly analyzed, the impact would be considered significant and  
12 unavoidable under CEQA.

13       121. While a mitigation measure addressed the localized air quality impacts of  
14 concrete batch plants, no analysis was offered for the global climate change impacts of concrete  
15 batch plants necessary for Section construction.

16       **3. Impacts to Biological Resources**

17       122. The Authority obtained incomplete information regarding sensitive plants and  
18 species affected by the Section. For example, EIR preparers conducted an assessment of the  
19 possible presence of an endangered species (Fresno Kangaroo Rat) by attempting to recreate  
20 land use from the aerial photographs provided within Google Earth. Although such a method  
21 might be useful for targeting surveys, it is not a substitute for protocol-level surveys in  
22 appropriate habitat, which should have been done before certification of the project-level EIR.

23       123. The surveys for rare plants did not follow guidelines set forth by the California  
24 Department of Fish and Wildlife (CDFW). For example, the CDFW guidelines were not  
25 adhered to in the preparation of the extent of surveys, use of systematic field techniques, timing  
26 and number of visits, and use of reference sites.

27       124. The survey extent for many biological resources was too small because the area  
28 studied was usually within 250 feet of the Section footprint. Because one major impact of the

1 project is fragmentation of existing habitat and decreased landscape connectivity, the study area  
2 should have been much larger. For example, Tricolored Blackbirds are known to travel 3–5  
3 miles or more daily to forage. Terrestrial species most likely to be impacted by the fragmenting  
4 impacts of the Section have home ranges that are orders of magnitude larger than the 250-foot  
5 buffer. Because the home ranges of many species are so much larger, on the order of square  
6 kilometers for American Badger and San Joaquin Kit Fox, larger survey areas were required to  
7 detect species whose home ranges might encompass the Section area. Many wetland-dependent  
8 species move more than 250 feet around wetlands as part of their natural life cycles. For  
9 example, at least two different studies found that the California Tiger Salamander moved  
10 between 423 and 814 feet from its wetland habitat. Development within the area that wetland  
11 species currently use would constitute an indirect impact on the wetland’s function and habitat  
12 value.

13       125. Thus, in these and in other respects, the Authority could not establish a legally  
14 adequate baseline for impacts to biological resources.

15       126. Despite incomplete baseline information regarding the presence of rare plants,  
16 wetlands, and special-status wildlife both on and near the Section’s potential permanent and  
17 temporary disturbance areas, the Final EIR concludes that many of the Section’s impacts to  
18 these biological resources will be reduced to less-than-significant levels through mitigation. As  
19 the botanical, wetland and wildlife surveys have not provided an adequate basis for analyzing  
20 potential Section impacts, the Authority failed to proceed in a manner required by law.

21       127. In other areas, the EIR claims that impacts will be reduced below a threshold of  
22 significance through future studies, project design, and mitigation. However, many of the  
23 mitigation measures lack specific performance standards and are therefore improperly deferred.

24       128. The EIR’s deferral of analysis and mitigation, without clear and enforceable  
25 performance standards, prevents the public and decisionmakers from determining the Section’s  
26 actual impacts on biological resources, both before and after mitigation, in violation of CEQA.

27       129. Despite concluding that the Section may have cumulative impacts on wildlife  
28 movement, the EIR failed to identify mitigation to avoid or reduce this impact.

1           **4. Geotechnical Impacts**

2       130. The Draft EIR failed to include detailed geotechnical information necessary to  
3 design the Section and analyze its impacts. As a result, potentially significant geotechnical  
4 risks associated with the Section's operational safety were downplayed. When these potentially  
5 adverse geotechnical impacts were identified in public comments based on consultants' reports,  
6 the Authority failed to revise and recirculate the EIR.

7       131. The revised draft EIR released in 2012 stated, "The severity of these  
8 [geotechnical] risks is limited because the geology along the alignment alternatives, stations,  
9 and HMF [Heavy Maintenance Facility] sites is generally very competent, with only localized  
10 areas of potentially loose or compressible soils."

11      132. On September 12, 2013, in response to a California Public Records Act request --  
12 but no earlier -- the Authority produced a copy of a report entitled "Draft 15% Submission  
13 Fresno to Bakersfield Geologic and Seismic Hazards Report, April 2013" (hereinafter, the  
14 "Geologic and Seismic Hazards Report"). This report revealed significant geotechnical  
15 information previously undisclosed to the public.

16      133. The Geologic and Seismic Hazards Report concluded that the risks of ground  
17 rupture, seismically induced ground deformations, shallow groundwater, soil corrosivity, and  
18 land subsidence were moderate to high along the Section alignment. The Report determined  
19 that most of these geotechnical hazards are distributed across the Central Valley or run  
20 perpendicular to the Section alignment. Consequently, the report concluded that these hazards  
21 are likely unavoidable if the proposed Section corridor were to be used. However, despite this  
22 information, the EIR did not examine using a different corridor such as along Interstate 5 or  
23 State Route 99.

24      134. The Geologic and Seismic Hazards Report contradicts the conclusions of the  
25 Revised Draft EIR that the geotechnical risks were only in "localized areas" and demonstrates  
26 the EIR's failure to disclose the Section's system-wide potentially adverse impacts to  
27 decisionmakers and the public.

28      135. Thus, the Final EIR failed to analyze or mitigate the potential impacts of track

1 movement and ground instability, which may require the use of different engineering strategies  
2 to stabilize the track. The Authority's failure to revise the Draft EIR to include this new  
3 geotechnical information in a revised EIR and to recirculate it for review and comments,  
4 deprived the public and decisionmakers of information necessary to evaluate the Section.

5       **5. Historic and Cultural Resource Impacts**

6       136. The EIR failed to analyze the significance of impacts to historic and cultural  
7 resources.

8       137. The Final EIR revealed, for the first time, new significant impacts to historic  
9 resources in downtown Fresno, including subterranean historic resources. These significant  
10 historic resources included residential features and privies associated with Chinatown. These  
11 features are eligible for the National Register of Historic Places.

12       138. These impacts should have been disclosed at the Draft EIR stage, so that the  
13 public had the opportunity to scrutinize the analysis and the effectiveness of measures proposed  
14 to avoid or minimize the impacts.

15       139. When the Authority approved the Merced-to-Fresno section of the Train System,  
16 the Archeological Treatment Plan prepared for that section failed to analyze the Fresno  
17 Chinatown area around the proposed Fresno High-Speed Rail station. Analysis of the Fresno  
18 Chinatown area was deferred to the CEQA process for the Fresno-to-Bakersfield Section.

19       140. The Fresno-to-Bakersfield Section Draft EIR claimed there were no known  
20 archaeological resources within the Section footprint.

21       141. The Authority prepared an addendum to the Archaeological Treatment Plan, and  
22 was notified of potential cultural resources in the area by the Chinatown Revitalization  
23 Organization. This addendum report admitted: "Extensive archival research and a review of  
24 previous studies indicate the presence of two archaeologically sensitive areas, including  
25 anticipated property types such as residential features and privies associated with Chinatown,  
26 eligible for the National Register of Historic Places (NRHP), that were not addressed in the  
27 ATP."

28       142. Thus, the Authority's own reports demonstrate that the Fresno-to-Bakersfield

1 Section Draft EIR failed to disclose the significance of construction impacts on known cultural  
2 resources and artifacts. On November 6, 2013, Petitioners submitted comments objecting to  
3 creating these impacts. However, the Authority asserted the comments raised no new issues.

4 143. The Authority's failure to incorporate into the EIR information contained in the  
5 addendum to the Archaeological Treatment Plan disclosing the Section's potentially significant  
6 impacts on cultural and historic resources and to recirculate the EIR violates CEQA.

7 144. Since it passes through the historically significant Fresno Chinatown area, the  
8 Section alignment poses vibration risks to historic buildings and artifacts that were not  
9 adequately analyzed and mitigated in the EIR. Vibrations from both construction and operation  
10 could damage buildings.

11 145. During construction, road closures and other interruptions may prevent access to  
12 businesses on the west side of the Section alignment, including those in Fresno's historic  
13 Chinatown area. Should these impacts result in the closures of these businesses, the Section  
14 would create blight in a historic district. The EIR failed to adequately disclose, analyze, and  
15 mitigate this impact.

16 146. The analysis of impacts to cultural and historical resources improperly deferred  
17 the investigation of resources that will be impacted.

18 147. The EIR failed to disclose that the Section alignment in the Bakersfield area  
19 would limit access to Central Park at Mill Creek and the Kern River Parkway, important  
20 recreational resources to residents of Kern County. The Final EIR identified these as  
21 significant recreational and cultural impacts, but the Authority failed to revise or recirculate the  
22 EIR prior to certification.

23 **6. Land Use Incompatibility Impacts**

24 148. Under section 15126.2(d) of the CEQA Guidelines, the EIR must discuss "the  
25 ways in which the proposed project could foster economic or population growth, or the  
26 construction of additional housing, either directly or indirectly, in the surrounding  
27 environment." It also must discuss the project's potential to "encourage and facilitate other  
28 activities that could significantly affect the environment, either individually or cumulatively."

1           *(Id.)*

2       149. While Petitioners desire economic growth in their Central Valley communities,  
3 they are concerned about the adverse environmental costs and impacts of unplanned sprawl  
4 growth induced by the Section.

5       150. The EIR failed to adequately analyze growth impacts east of Hanford.

6       151. The City of Hanford's General Plan calls for a transit hub in the downtown area  
7 of the City. However, the Authority approved an alignment that runs east of Hanford, outside  
8 the City's primary sphere of influence, within the County of Kings. The City of Hanford and  
9 the Kings County Association of Governments have invested in a transportation hub on the  
10 BNSF alignment alternative that would run through downtown Hanford. The Authority's  
11 approval of construction of a Train System station in a location far from downtown Hanford is  
12 therefore inconsistent with the applicable City General Plan.

13       152. The City of Hanford General Plan planned for urban growth accommodation only  
14 around the location where a station was proposed in the Hanford West Bypass Alternative.  
15 This location was within the City's sphere of influence. However, the "BNSF Alternative –  
16 Hanford East" alignment chosen by the Authority is located outside the City of Hanford's  
17 planned urban land uses, and outside the City's primary sphere of influence. The Section  
18 would increase urban growth demand around the station, thus creating greater direct, indirect,  
19 and cumulative impacts on surrounding agricultural land located in Kings County. The  
20 alignment and station would create sprawl growth outside of urban boundaries. Such  
21 inducement of sprawl growth violates Proposition 1A's direction to limit sprawl growth. (Sts.  
22 & Hy. Code, § 2704.09.)

23       153. The land surrounding the proposed station east of Hanford is agricultural land that  
24 is planned and prioritized in the Kings County 2035 General Plan for long term agricultural  
25 land preservation. Numerous policies in the Kings County General Plan direct urban growth to  
26 the cities and community services districts that are capable of providing urban services such as  
27 water and sewer service. The potential Section station near Hanford and heavy maintenance  
28 facility alternative locations are proposed in rural areas that are not capable of providing urban

1 services.

2       154. The EIR failed to adequately analyze and mitigate impacts caused by the  
3 Section's interference with existing rail transportation. BNSF Railway Company commented  
4 that the Authority's preferred alignment, a substantial portion of which would run adjacent to  
5 BNSF's right-of-way, would adversely impact BNSF's ability to maintain and use its current  
6 right-of-way, would limit opportunities to construct new spurs to serve clients, and would raise  
7 height clearance issues. Many of the clients BNSF serves through spurs are in agricultural-  
8 related industries. The Authority did not address these concerns.

9       155. The EIR also failed to adequately analyze and mitigate impacts caused by the  
10 Section's potential for electromagnetic interference risks with freight railroad signals and  
11 Positive Train Control systems.

12       156. The federal Department of Transportation Act of 1966 section 4(f) stipulates that  
13 Department of Transportation agencies cannot approve the use of land from publicly owned  
14 parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites  
15 unless the relevant agency has incorporated feasible alternatives to minimize harm to the park  
16 or recreational area that may occur. The Authority has not incorporated feasible alternatives to  
17 minimize harm to these resources.

18       157. The Section alignment would run through Bakersfield's Central Park at Mill  
19 Creek and the Kern River Parkway, recreational and wildlife areas protected by section 4(f) of  
20 the Department of Transportation Act. The Draft EIR failed to disclose that the Section would  
21 require takings of resources protected by section 4(f).

22       158. The EIR also failed to incorporate an alternative alignment that would have  
23 avoided impacts to Mill Creek and the Kern River Parkway.

24       159. Section 6(f) of the Land and Water Conservation Act requires that the conversion  
25 of lands or facilities acquired with Land and Water Conservation Act funds be coordinated with  
26 the Department of the Interior. Replacement in kind is typically required.

27       160. The Kern River Parkway was acquired with Land and Water Conservation Act  
28 funds. However, the EIR failed to disclose that the Section would require conversion of

1 resources protected by section 6(f). The EIR also failed to avoid impacts to the Kern River  
2 Parkway by selecting an alternative route through Bakersfield.

3 161. The necessary takings of section 6(f) resources was not disclosed or sufficiently  
4 mitigated by selection of alternative route through Bakersfield.

5 162. The impacts of permanent road closures were not adequately analyzed in the EIR  
6 nor were the secondary impacts of mitigation measures analyzed. For example, permanent road  
7 closures would have significant disruptive effects on agricultural operations where agricultural  
8 lands would be deprived of roadway access by the road closures. In lieu of analyzing the  
9 Section's traffic impacts, the EIR provided for a future Traffic Management Plan that would  
10 identify and respond to various traffic impacts. This Traffic Management Plan is an  
11 impermissible deferral of analysis and mitigation for this impact.

12 163. In some areas, Section-related road closures would require much longer out-of-  
13 direction travel than predicted in the EIR, resulting in greater numbers of vehicle miles traveled  
14 and associated air quality impacts that were inadequately disclosed, analyzed, and mitigated.

15 **7. Noise and Vibration Impacts**

16 164. The EIR failed to adequately analyze and mitigate noise and vibration impacts to  
17 Mercy Hospital in Bakersfield, as was stated in the hospital's April 30, 2014 letter.

18 165. For example, in response to Mercy Hospital's comment that the EIR's analysis  
19 did not include ground borne vibration measurements taken at or near Mercy Hospital, the  
20 Authority merely stated that Mercy Hospital was located too far away from the existing train  
21 tracks to obtain an accurate measurement of vibration levels caused by existing operations.

22 166. This response demonstrates that appropriate studies were not done.

23 167. Mercy Hospital also commented that the EIR did not present calculations to  
24 substantiate the estimated Section noise levels. Without providing any detail or support, the  
25 Authority responded that it quality-checked its model and determined the results to be accurate.  
26 This response fails to provide the good faith, reasoned response required by CEQA.

27 **8. Aesthetic Impacts**

28 168. The Draft EIR failed to disclose impacts of sound walls that would be constructed

1 to reduce the Section's noise impacts. Once more extensive sound walls were disclosed in the  
2 Final EIR, new potentially significant aesthetic and air quality impacts were implicated. Yet  
3 the Authority failed to revise and recirculate the EIR.

4 169. The aesthetic impacts of new, higher-clearance designs for bridges over Kings  
5 River were not disclosed in the Draft EIR, nor was the EIR revised and recirculated after  
6 disclosure.

7 **9. Cumulative Impacts**

8 170. The EIR must list and analyze all projects that may lead to cumulative impacts,  
9 including those "outside the control of the agency." (CEQA Guidelines, § 15130(b)(1).) It also  
10 must define the geographic scope of the area affected by each type of cumulative impact, and  
11 explain its use of any particular limitation on that scope. (CEQA Guidelines, § 15130(b)(3).)

12 171. The neighboring sections are reasonably foreseeable future projects, especially  
13 the Merced-to-Fresno section (or at least the southern 24 miles of this section). It was apparent  
14 as early as December 2010 that parts of two sections (Merced-to-Fresno and Fresno-to-  
15 Bakersfield) would first be built concurrently and comprise the ICS. Yet, the Final EIR failed  
16 to identify the neighboring sections as pending or future projects in the lists provided as  
17 appendices to the cumulative impacts analysis. The Final EIR's discussion of cumulative  
18 impacts for almost every resource area fails to consider the cumulative impacts of the Section in  
19 combination with the contributing cumulative impacts of each of the other Central Valley  
20 sections. More specifically, the discussions in Final EIR section 3.19 concerning cumulative  
21 noise, EMI and EMF, public utilities, hydrology and water quality, hazardous materials, and  
22 socioeconomic and environmental justice impacts caused by Section construction and operation  
23 are completely silent concerning the contributing cumulative impacts caused by the Merced-to-  
24 Fresno section and the Bakersfield-to-Palmdale section. These impacts from neighboring  
25 sections will combine, especially where the sections meet (i.e., in Fresno and Bakersfield),  
26 making the impacts greater than when considered in isolation.

27 172. While the cumulative air quality impact analysis in the Fresno-to-Bakersfield  
28 Section EIR purports to consider the impacts of the statewide Train System, it does not mention

1 the other Central Valley sections of the Train System, provides no information concerning  
2 construction phasing (including information concerning the construction of the ICS).  
3 Furthermore, there is nothing in the EIR or its appendices that shows there was an analysis of  
4 the cumulative air quality impacts of construction and operation of all Central Valley sections.  
5 As a result, the Final EIR underreports the Section's cumulative air quality impacts when  
6 combined with the other contributing sections.

7       173. The EIR's discussion of cumulative impacts on biological resources during  
8 construction purports to consider the impacts of constructing neighboring sections. However,  
9 the analysis does not provide any information concerning construction phasing; does not  
10 provide any quantitative information concerning impacts that will be caused by other Train  
11 System sections; and concludes, without any supporting evidence, that the Section's  
12 contribution to construction-period impacts on biological resources will be less than  
13 cumulatively considerable.

14       174. The EIR's discussion concerning the Section's cumulative impacts to agricultural  
15 lands asserts that the analysis was based in part on "the Merced to Fresno and Bakersfield to  
16 Palmdale sections," however, this claim is unsupported by any citation, reference, or  
17 substantiation. The remainder of the discussion concerning cumulative impacts to agricultural  
18 lands does not include any reference or information concerning the contributing cumulative  
19 impacts of the Merced-to-Fresno section and the other Central Valley sections.

20 **D. Recirculation of the Final EIR was Required.**

21       175. The CEQA Guidelines provide "significant new information" requires  
22 recirculation when: (1) a new significant environmental impact would result from the project or  
23 from a new mitigation measure proposed to be implemented; (2) a substantial increase in the  
24 severity of an environmental impact would result unless mitigation measures are adopted that  
25 reduce the impact to a level of insignificance; or (3) a feasible project alternative or mitigation  
26 measure considerably different from others previously analyzed would clearly lessen the  
27 environmental impacts of the project, but the project's proponents decline to adopt it. (CEQA  
28 Guidelines, § 15088.5.)

1       176. The Final EIR contains major changes from the Draft EIR, with respect to the  
2 description of the Section, the impact analysis and the mitigation measures for the Section. As  
3 a result of these changes, the Final EIR reveals that the Section will result in both new and  
4 increased significant impacts and the document includes other significant new information that  
5 trigger the recirculation requirement. In failing to recirculate the Draft EIR, the Authority  
6 violated CEQA, specifically Public Resources Code section 21092.1 and CEQA Guidelines  
7 section 15088.5. The Authority deprived members of the public and other public agencies,  
8 including responsible and trustee agencies, the opportunity to review and comment on the new  
9 impact analysis, the significance of the Section's various impacts under the Final EIR's new  
10 analysis, possible mitigation measures for the newly disclosed impacts, the cumulative impacts  
11 of the Section under the new impact analysis, and alternatives that could lessen the newly  
12 disclosed impacts. By failing to recirculate the EIR for public review and comment, the  
13 Authority abused its discretion. Recirculation is required in this case for numerous reasons,  
14 including but not limited to the following:

15       177. The increase in severe noise impacts without mitigation triggers recirculation.  
16 The Authority revealed, for the first time in the Final EIR, that the Section will have at least  
17 five additional miles of sound barriers. The Draft EIR indicated that 139,233 feet of sound  
18 barriers could be constructed to mitigate severe noise effects caused by the BNSF Alternative.  
19 In contrast, the Final EIR stated, "A total of 12 sound barriers would be installed, with a  
20 combined length of approximately 167,208 feet and maximum height of 14 feet, for the BNSF  
21 Alternative." That is 27,975 additional feet, or more than five miles, of sound barriers added in  
22 the Final EIR. One proposed sound barrier in Bakersfield increased from 8,453 feet in the  
23 Revised Draft EIR to 51,390 feet in the Final EIR. The Authority was required to analyze and  
24 mitigate the impacts associated with these additional sound barriers, but it did not. Because the  
25 impacts are more severe, and are not mitigated, recirculation was triggered.

26       178. The Final EIR reveals increased severe noise impacts in several locations, but  
27 does not propose sound barriers to address these increased impacts on the basis that they are  
28 economically infeasible.

1       179. The Final EIR also revealed, for the first time, new significant impacts to historic  
2 resources in downtown Fresno. These impacts should have been disclosed at the Draft EIR  
3 stage, so that the public would have the opportunity to scrutinize the analysis and the measures  
4 proposed to avoid or minimize the impacts.

5       180. The Final EIR substantially underreported the amount of dirt needed for fill  
6 material. A tremendous amount of fill-dirt will be needed to construct the ten-foot-high, fifty-  
7 foot-wide rail beds, not to mention the numerous overcrossings for the Section. The Final EIR  
8 states that the entire Section would require “11,300,000 cubic yards of fill (assuming no fill is  
9 provided by project excavation).” This estimate conflicts with the amount of dirt that the  
10 Authority stated would be required in its Indirect Source Review application to the San Joaquin  
11 Valley Air Pollution Control District. That application states that a 70-mile portion of the  
12 Section will require 24,000,000 cubic yards of fill. Thus, the Final EIR substantially  
13 underestimated the amount of fill material that must be extracted, transported, placed, and  
14 compacted.

15       181. Air quality and traffic impacts will result from the extraction, transportation,  
16 placement, and compaction of fill-dirt. Transporting this additional fill-dirt will also damage  
17 roads. These much more severe impacts trigger a requirement to revise the EIR and recirculate  
18 it.

19       182. The public commented that much of the fill-dirt needed for the Section would  
20 come from local farms. The Draft EIR did not specify how many acres of farmland would be  
21 affected, how deep these acres would be excavated, or how much of valuable topsoil will be  
22 lost as fill-dirt. The public requested information on the distances that fill-dirt would have to be  
23 hauled, hauling routes and affected roads, and mitigation that would be incorporated to account  
24 for extra wear and tear on public roads. The Authority claimed that soils from nearby farms  
25 and soils used for agricultural production would not be used to construct the Train System, but  
26 made no enforceable commitments to such conditions.

27       183. The EIR failed to adequately analyze Valley Fever and to mitigate the Section’s  
28 potentially significant contribution to the spread of this serious health problem. Instead, the

1 EIR concludes without any evidentiary support or factually supported analysis that the risk of  
2 spreading Valley Fever spores during either Section construction or operation is less than  
3 significant. However, the San Joaquin Valley Air Pollution Control District acknowledges that  
4 Valley Fever is a serious, life-threatening disease caused by airborne spores of *C. immitis*, a  
5 soil-dwelling fungus found in the Section area. The San Joaquin Valley experiences one of the  
6 highest regional rates of the disease, especially in the southern and western portions of the  
7 Valley. Eighty percent of the Valley Fever cases in California originate in Fresno, Kern, Kings,  
8 San Joaquin, San Luis Obispo, and Tulare Counties. Due to the serious nature of this illness,  
9 the massive amount of soil that must be moved to create the earthen berms, overpass  
10 embankments, and other fill needs, the likely occurrence of *C. immitis* spores in that soil, and  
11 the already at-risk population, the Section may indeed cause significant impacts to worker and  
12 public health.

13       184. The Authority dismissed the concern about this potentially significant impact in a  
14 response to comments, without having conducted any analysis into the risk that Section  
15 construction and operation pose in spreading the Valley Fever fungi spores. This approach to  
16 the health and safety impacts posed by Valley Fever contrasts markedly with the California  
17 Energy Commission's approach to the impact in its recent environmental impact analysis of a  
18 renewable energy project proposed in Kern County. There, the environmental impact analysis  
19 concluded that Valley Fever posed a real threat to worker and public safety, requiring  
20 mitigation. The EIR should have been revised to consider the risks posed by Valley Fever and  
21 to avoid and minimize those risks.

22       185. The Final EIR also fails to address secondary significant impacts associated with  
23 newly proposed mitigation measures for certain properties, intersections, and roadways. One  
24 measure requires the Authority to maintain roadway access for property owners. This measure  
25 now applies to 46 properties for the BNSF Alternative chosen as the Section, an increase from  
26 21 properties disclosed in the Draft EIR. The Final EIR also proposed to widen approaches to  
27 intersections and add turn lanes to intersections. Since the Final EIR applied these mitigation  
28 measures to new locations that were not identified in the Draft EIR, it introduced secondary

1 impacts at these locations that had not been analyzed and mitigated. This triggered the  
2 requirement to recirculate the EIR for public review and comment.

3       186. In response to a comment by the California Division of Oil, Gas, and Geothermal  
4 Resources, Bakersfield Office, the Final EIR identified, for the first time, approximately 96  
5 active and inactive oil, gas, and water wells that would be impacted within 50 feet of the  
6 Section's right-of-way. The Section's potentially significant impacts to almost all of these  
7 wells had not been previously disclosed. The substantial increase in severity of this impact,  
8 with no mitigation measures identified to reduce it, also triggers recirculation.

9       187. Further, the Final EIR states, for the first time, that the Section is sufficiently long  
10 to be used for train testing. This new project feature will cause its own set of impacts that have  
11 not been disclosed, analyzed, or mitigated. Most importantly, the potential test track introduces  
12 a new health and safety concern. If the Section, rather than the ICS, is to operate as a test track,  
13 the potential for accidents increases. The Final EIR does not address these and other potentially  
14 significant impacts.

15       188. Changes to the unavoidable impacts section of the EIR reveal new significant  
16 impacts that require recirculation. The Final EIR discloses significant and purportedly  
17 unavoidable impacts to Mill Creek Linear Park and the Kern River Parkway that had not been  
18 previously identified as significant.

19       189. The Final EIR also claims impacts that had been found significant and  
20 unavoidable before – for example, impacts to air quality, biological resources, and 4(f)  
21 properties – have somehow become insignificant. The mitigation measures for these impacts  
22 would not reduce the impacts below a level of significance, although they demonstrate that the  
23 impacts could feasibly be avoided with the incorporation of additional mitigation measures or  
24 alternatives.

25       190. The original Draft EIR, released in 2011, proposed an “at grade” design over the  
26 Kings River, which elevated the tracks over all three channels of the Kings River three feet  
27 above river levees. During the initial review of the project, the Authority was notified by the  
28 Kings River Water Authority, the Kings River Conservation District and many citizens that a

1 three foot clearance was insufficient for the continued operation and maintenance of the river  
2 channels. Even so, the Authority maintained the three-foot clearance design in the Revised  
3 Draft EIR and did not disclose a revised design until the Final EIR. The updated design, which  
4 elevated tracks further over the river channels, creates increased visual impacts to a rural and  
5 scenic area; increased sound impacts caused by the elevation of the tracks (sound will not  
6 encounter the same dampening effect that would be if it were on the ground and absorbed by its  
7 surroundings); increased intensive construction efforts to construct concrete pillars and pylons;  
8 increased impacts to the habitat caused by increased construction requirements; increased safety  
9 concerns for area residents and Section riders in the event that an accident or health issue occurs  
10 in the elevated section; and increased impacts to local agriculture as elevated tracks present a  
11 vertical impediment to the aerial application of pesticides and herbicides.

12 **E. Inadequate Analysis of Alternatives.**

13 191. CEQA imposes upon the Authority a clear, present and mandatory duty to  
14 analyze and adopt all feasible mitigation measures and consider a reasonable range of  
15 alternatives, including any feasible alternative which would substantially lessen the significant  
16 environmental effects of the Section.

17 192. In addition to an inadequate analysis of impacts, the EIR fails to consider a  
18 reasonable range of alternatives, and the Authority refused to consider alternative alignment  
19 corridors such as Interstate 5, Highway 99, or the alternative of tunneling in the area of urban  
20 centers such as the City of Hanford which has the BNSF rail line passing through the City.

21 193. The 2005 Program EIR identified a number of alternative Train System  
22 corridors: along the coast, Interstate 5, Highway 99 and parallel to the existing BNSF right-of-  
23 way. The Program EIR explained that its evaluations, conclusions and recommendations with  
24 respect to these corridors were “informed by previous studies.” These previous studies were  
25 the 1996 High-Speed Rail Corridor Evaluation prepared by the High-Speed Rail Commission,  
26 the 1999 High-Speed Rail Corridor Evaluation prepared by the Authority, and the 1999  
27 ridership projections prepared by Charles River Associates. The 2005 Program EIR stated that  
28 these foregoing evaluations of potential Train System corridors and alignments used the

1 following criteria: construction costs, impacts on natural resources, compatibility with land use  
2 policies, costs to secure rights-of-way, connectivity and ridership/revenue projections. A  
3 comment letter pointed out that many of the facts associated with these issues have changed  
4 dramatically since 1996 and 1999 – fifteen to eighteen years ago. For the most part, Interstate 5  
5 travels through land of poorer quality with poorer water conditions than found in the region  
6 around the Section and, therefore, much lower agricultural and biological value. In contrast, the  
7 alignments through the central part of the Central Valley travel mostly through very high-value  
8 farmland. Therefore, the 2005 Program EIR corridor evaluations were based on data and  
9 projections that are now old, obsolete and erroneous.

10 194. Commenters urged the Authority to reconsider the feasibility of an alternative that  
11 would follow the Interstate 5 corridor, the Highway 99 corridor, or an alignment through  
12 downtown Hanford. The Authority dismissed the Interstate 5 and Highway 99 alternatives,  
13 relying on a perfunctory analysis in the Program EIR. Similarly, commenters urged the  
14 Authority to reconsider previously rejected versions of the “BNSF Alternative” that would  
15 avoid impacts in the Hanford area, but the Authority summarily rejected the comment. In so  
16 constraining the Final EIR’s consideration of reasonable alternatives, the Authority violated  
17 CEQA.

18 195. The EIR does not evaluate the original BNSF alignment, designated as the  
19 “preferred alignment” in the 2005 Program EIR. A member of the public pointed out that the  
20 BNSF alignment was described in the 2005 Program EIR as running contiguous to the BNSF  
21 tracks and through the towns of Hanford, Corcoran and Wasco. According to the Program EIR,  
22 it would “serve a downtown [Hanford] station site.” By traveling contiguous to existing rail  
23 lines, the Program EIR asserted the anticipated rail line would have less impact on agricultural  
24 lands. For these reasons, the Authority selected the BNSF alignment as its “preferred  
25 alignment,” adding that it “would likely avoid impacts on social and economic, natural and  
26 cultural resources,” as compared to all of the other alignments compared in the 2005 Program  
27 EIR.

28 196. However, the Authority’s 2005 “preferred alignment” was not addressed in the

1 Section's EIR. Instead, the EIR proposed two variations on the BNSF alignment – a Hanford  
2 western bypass and a Hanford eastern bypass. These new alignments, together with other  
3 bypass variations, diverge from the BNSF alignment and travel a significant distance away for  
4 approximately 90 miles of the Section's 114-mile length. These bypass variations run between  
5 one and four miles distant from the BNSF rail lines. In sharp contrast to the 2005 BNSF  
6 "preferred alignment," these new variations plow through a great deal of prime farmland and  
7 bypass the towns of Hanford and Corcoran, rather than run through them. Because of this, the  
8 alternatives bypass each town's existing Amtrak stations. These are all fundamental differences  
9 from the "preferred alignment" selected in the 2005 Program EIR.

10       197. The 2005 BNSF alignment has significantly different effects that were not  
11 identified and compared to the Hanford bypass variations. The Authority ignored the  
12 imperative to minimize the Section's impact on agricultural land in the evaluation of the two  
13 Hanford Bypass variations. The original 2005 BNSF alternative should have been included in  
14 the comparisons, and it would have received high marks for its ability to minimize impacts on  
15 agricultural land.

16 **F. The Authority's Findings and Statement of Overriding Considerations are Not  
17 Supported by Substantial Evidence.**

18       198. CEQA prohibits approval of projects with significant adverse environmental  
19 impacts if there are feasible alternatives or mitigation measures that would reduce or eliminate  
20 those impacts. (Pub. Resources Code, § 21002; CEQA Guidelines, § 15021(a)(2).)

21       199. In order to approve a project despite significant unmitigated impacts on the  
22 environment, the Authority was required to adopt a statement of overriding considerations.  
23 (Pub. Resources Code, § 21081.)

24       200. A statement of overriding considerations must find, "[t]here is no feasible way to  
25 lessen or avoid the significant effect..." of the project. (CEQA Guidelines, §§ 115043,  
26 15093(b).) This finding must be supported by substantial evidence. (CEQA Guidelines, §  
27 15093.)

28       201. The Authority adopted a statement of overriding considerations, specifically

1 finding that specific considerations make infeasible the mitigation measures or alternatives  
2 identified in the EIR.

3 202. The Authority rejected feasible alternatives and mitigation measures that would  
4 lessen or avoid the Section's significant adverse effects, in violation of CEQA.

5 203. For example, the EIR determined that the Section's permanent conversion of  
6 3,472 acres of agricultural land to non-agricultural use is a significant and unavoidable impact,  
7 but the Authority failed to incorporate all feasible mitigation to lessen or avoid agricultural  
8 impacts.

9 204. The EIR relied on mitigation measure AG-MM#1, which depends upon "willing  
10 sellers" to place remaining agricultural land under agricultural conservation easements. The  
11 EIR admits this mitigation measure will not reduce the Section's agricultural impacts below a  
12 level of significance.

13 205. In the Hanford area, the BNSF alternative or an alignment parallel to Highway 99  
14 or Interstate 5 would reduce the acreage of productive agricultural land impacted by the  
15 Section. Yet these alternative alignments were rejected as infeasible, or for failing to meet all  
16 project objectives. An alternative that is otherwise feasible should be analyzed if it meets most  
17 of the project objectives, even if it does not meet all of them.

18 206. The Section's impacts on agricultural resources in the Hanford area would be  
19 reduced or eliminated if the Section's tracks were placed in a subterranean trench or tunnel  
20 through Hanford. However, the Authority rejected this approach as economically infeasible  
21 because the Section would cost more if the entire length of the Fresno-to-Bakersfield section  
22 were placed in a trench or tunnel. The Authority failed to analyze trenching or tunneling  
23 limited to urban areas that would experience significant impacts, such as Hanford.

24 207. Moreover, the Final EIR rejected as infeasible numerous alternatives and  
25 mitigation measures that might have made the Section more costly or less profitable. CEQA  
26 does not authorize an agency to proceed with a project that will have significant, unmitigated  
27 effects on the environment unless the measures necessary to mitigate those effects are truly  
28 infeasible.

1       208. Where an agency rejects an alternative or mitigation measure based on economic  
2 infeasibility, substantial evidence must support this finding. Otherwise, if the project can be  
3 economically successful with mitigation, then CEQA requires that mitigation.

4       209. The EIR contains no support for the claim that trenching or tunneling in Hanford  
5 or other affected urban areas is financially infeasible.

6       210. Furthermore, the Authority has proposed trenching or tunneling along the  
7 Bakersfield-to-Palmdale section of the Train System to avoid impacts to residences in the Santa  
8 Clarita area. Thus, this alternative or mitigation measure is inherently feasible.

9       211. The Authority has determined that the Section will have disproportionately  
10 adverse and significant impacts on minority and low-income populations in the Central Valley,  
11 especially the division and displacement of existing communities.

12       212. Specifically, the Section would displace the Fresno Rescue Mission, divide and  
13 displace an established community east of Hanford, and displace communities located near  
14 Corcoran and Crome.

15       213. Instead of providing all feasible mitigation and instead of routing the Section  
16 alignment to avoid east Hanford, Corcoran, and Crome, the EIR relies on vague and deferred  
17 mitigation measures. For example, mitigation measure SO-MM#3 indicates that the Authority  
18 will consult with community representatives and officials to relocate important community  
19 facilities but does not require that relocation actually occur. Similarly, mitigation measure SO-  
20 MM#2 indicates that the Authority will consult with officials and representatives to identify  
21 noise abatement measures for businesses and organizations but does not require that noise  
22 abatement or relocation occur.

23       214. Accordingly, the Authority's finding that the Section incorporated all feasible  
24 alternatives and mitigation measures to avoid disproportionate impacts to minority and low  
25 income communities cannot be supported by substantial evidence.

26       215. The Authority has also found that the Section would have significant adverse  
27 impacts related to growth inducement and land use near Hanford, but failed to incorporate  
28 feasible alternatives and mitigation measures to avoid this impact. Potential alternatives raised

1 by Petitioners included, but were not limited to, the BNSF alignment, an alignment parallel to  
2 Interstate 5, and an alignment parallel to Highway 99.

3       216. The Authority has also found that the Section will not result in significant adverse  
4 air quality impacts during construction, despite admitting that the Section would emit  
5 significant quantities of volatile organic compounds, nitrogen oxide, and particulate matter.  
6 The Authority relies on mitigation measure AQ-MM#4 for this finding, which requires the  
7 Authority to enter into a Voluntary Emissions Reduction Agreement (“VERA”) with the San  
8 Joaquin Valley Air Pollution Control District that will offset the Section’s air quality impacts to  
9 net zero. However, as of the time the Section was approved, no such VERA had been signed.  
10 Thus, this mitigation measure is vague and speculative. The Authority failed to proceed in a  
11 manner required by law.

12       217. The Authority’s findings in support of its rejection of the Interstate 5 and  
13 Highway 99 alignments are not supported by substantial evidence. For example, the Authority  
14 states that the Interstate 5 alternative would not satisfy a prior determination by the Authority  
15 that it should serve Central Valley markets, rather than bypass them. But the Authority is  
16 required by Streets and Highways Code section 2704.09 to maximize use of existing  
17 transportation corridors. It must also provide travel in a manner sensitive to natural and  
18 agricultural resources. The Train System could serve Central Valley markets by including a  
19 station along the Interstate 5 corridor and using spur lines. The Final EIR states that the use of  
20 such spur lines was considered and rejected at the 2005 Program EIR stage, but as commenters  
21 pointed out, this claim is inaccurate.

22       218. The Authority also states that an Interstate 5 alternative would result in lower  
23 ridership, when in fact studies showed it would result in higher ridership due to faster travel  
24 times and less expensive construction and operation costs.

25       219. The Authority rejects the Highway 99 alternative based on the need to obtain  
26 permits under section 404 of the Clean Water Act, comply with CEQA, and satisfy the demands  
27 of Union Pacific Railroad, a private business. However, all potential Section alignments would  
28 require compliance with the Clean Water Act and CEQA, and the Authority’s chosen alignment

1 requires coordination with BNSF Railway. The approved Section would interfere with  
2 thousands of acres of productive farmland and numerous other private businesses, including  
3 BNSF. Thus, these findings lack evidentiary support and cannot support the Statement of  
4 Overriding Considerations.

5       220. A valid statement of overriding considerations must also find that the project's  
6 benefits outweigh its significant adverse environmental impacts. (CEQA Guidelines, §§ 15043,  
7 15093.) This finding must be supported by substantial evidence. (CEQA Guidelines, § 15093.)

8       221. Here, the Section's purported benefits of improved air quality, reduced  
9 greenhouse gas emissions, and eliminated congestion between cities are illusory or otherwise  
10 unsupported by substantial evidence.

11      222. For example, the Statement of Overriding Considerations claims the Train System  
12 will provide substantial improvement in air quality by reducing vehicle miles traveled (VMT)  
13 and by reducing greenhouse gas emissions. But the Final EIR discloses a fifty percent decrease  
14 in the Section's greenhouse gas emissions benefits from what was reported in the Draft EIR.  
15 Further, the EIR fails to analyze the increase in VMT caused by road closures.

16      223. The Statement of Overriding Considerations claims that the Section will alleviate  
17 congestion on the interstate highway system, at commercial airports, and on conventional  
18 passenger rail systems, which are allegedly operating at or near capacity. This congestion is  
19 illusory, as capacity remains available on Amtrak trains, on segments of the highways outside  
20 of major cities, and at several underused California airports. Use of these facilities will expand  
21 to meet demand. Further, the EIR lacks evidence supporting the conclusion that the project will  
22 substantially reduce the need for these other transportation facilities.

23      224. The Statement of Overriding Considerations contemplates use of the Section  
24 tracks for conventional rail, even though the alignment will not serve existing Amtrak stations  
25 and the Statement admits, "It may not be...appropriate to allow for such interim use."

26      225. The purported Section benefits cannot support the Authority's override of the  
27 Section's real and adverse unmitigated impacts. For example, the consideration that the Section  
28 could be used as a test track for future high speed trains cannot outweigh the Section's

1 enormous environmental justice, noise, land use, agricultural, aesthetic, and cultural impacts –  
2 including the loss of thousands of acres of productive agricultural land.

3 226. Without substantial evidence to support findings regarding mitigation obligations  
4 or project benefits, the Authority's adoption of a statement of overriding considerations for the  
5 Section violates CEQA.

6 **SECOND CAUSE OF ACTION**  
7 **(VIOLATION OF ANTI-DISCRIMINATION LAW)**

8 227. Petitioners incorporate all previous paragraphs as if fully set forth herein.

9 228. Government Code section 11135 subd. (a) provides: "No person in the State of  
10 California shall, on the basis of race, national origin, ethnic group identification, religion, age,  
11 sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and  
12 equal access to the benefits of, or be unlawfully subjected to discrimination under, any program  
13 or activity that is conducted, operated, or administered by the state or by any state agency, is  
14 funded directly by the state, or receives any financial assistance from the state."

15 229. Title VI of the federal Civil Rights Act, Section 601, provides that "no person in  
16 the United States shall, on the ground of race, color, or national origin, be excluded from  
17 participation in, be denied the benefits of, or be subjected to discrimination under any program  
18 or activity receiving federal financial assistance." This provision prohibits discrimination in  
19 state or local programs or activities that receive federal funds. The Authority receives federal  
20 funding for the Section and the Train System. Section 602 of the Civil Rights Act allows a  
21 violation to be established by proof of disparate impact.

22 230. In direct contravention of Government Code section 11135 and the Civil Rights  
23 Act, the final EIR admits:

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1           *minority and low income populations concentrated in urban areas along the*  
2           *project area* in Fresno, Corcoran, Wasco, Shafter and Bakersfield, as well as in  
3           rural areas such as Newark Avenue, 5th Avenue and Waukena Avenue, and  
4           Crome would also bear disproportionately high and adverse project period  
5           impacts. These impacts would include an increase in both ambient noise levels  
6           and vibratory impacts above standards; disruption of communities and the  
7           displacement of community facilities, changes or loss of park resources, decreases  
8           in visual quality, and cumulative impacts for noise and vibration, communities,  
9           and aesthetics and visual resources. (Final EIR p. 6-2, emphasis added.)

10          231. Commenter Ybarra Companies noted that the Central Valley through which  
11         approximately 114 miles of the Train System would cut has an impacted population that is 43  
12         percent Hispanic, a total minority population of 56.6 percent, and an annual median income  
13         substantially below the California average. As these and other comments noted, the corridor  
14         takes out homes, businesses, churches, shelters, and other community facilities where minority  
15         and low-income individuals live, work, and play. The EIR, in the section on Environmental  
16         Justice, notes, “The environmental justice (EJ) analysis conducted for the Fresno-to-Bakersfield  
17         Section of the HST EIR identified the potential for the project to result in disproportionately  
18         high and adverse effects on minority and low-income populations.”

19          232. Agencies such as the Authority that are receiving federal funds are required by  
20         Executive Order 12898 and Title VI of the Civil Rights Act of 1964 to avoid such impacts.  
21         California agencies such as the Authority are prohibited by Government Code section 11135  
22         from approving activities with disproportionately high and adverse effects on minority and low-  
23         income populations.

24          233. Since the EIR itself identifies the potential for disproportionately high adverse  
25         effects on minority and low-income populations, the Authority was required to avoid such  
26         impacts – including evaluating alternative alignments or designs including tunneling that would  
27         avoid these impacts.

28          234. By refusing to consider an Interstate 5, Highway 99, or downtown BNSF  
29         alignment after significant disproportionate impacts were identified, the Authority harms  
30         already economically challenged populations. Many people rely heavily on Amtrak to  
31         commute to work, obtain groceries and supplies, and to attend doctors' appointments and

1 conduct other business. By eliminating Amtrak in urban centers such as Hanford and bypassing  
2 a majority Hispanic, limited English speaking population, the Authority eliminated access to the  
3 only reasonable means of access to necessary public services for an already underserved  
4 population.

5 235. By failing to avoid disproportionate impacts to minority and low income  
6 populations, the Authority violated state and federal anti-discrimination laws.

7 **THIRD CAUSE OF ACTION**  
8 **(VIOLATION OF THE WILLIAMSON ACT)**

9 236. Petitioners incorporate all previous paragraphs as if fully set forth herein.

10 237. The Williamson Act (Gov. Code, § 51200 et seq.) recognizes the importance of  
11 agriculture to the economy of the State of California and seeks to maintain agricultural use on  
12 the agricultural land.

13 238. Government Code section 51292 states, “If the land is agricultural land covered  
14 under a contract pursuant to this chapter for any public improvement, that there is no other land  
15 within or outside the preserve on which it is reasonably feasible to locate the public  
16 improvement.”

17 239. The Authority identified at least 275 parcels (1,515 acres) of protected farmland  
18 affected by the Section. The Authority failed to properly establish that there is no other land  
19 that is not subject to Williamson Act contractual preservation on which it was reasonably  
20 feasible to locate the Section.

21 240. The Williamson Act provides that it is the duty of a public agency to minimize  
22 the amount of agricultural preserve land taken. The Authority attempted to undertake such an  
23 evaluation in the EIR, but it only compared the amount of agricultural preserve land impacted  
24 by the two Hanford bypass alternatives. By failing to compare these two alternatives with the  
25 original 2005 BNSF alignment, and with potential Interstate 5 and Highway 99 alignments, the  
26 Authority failed to comply with the Williamson Act.

27 241. The Authority asserted it is not required to consider alignments it eliminated in  
28 the 2005 Program EIR. However, under the statutory obligation of the Williamson Act, the

1 Authority is required to consider such alignments before determining alternatives that avoid  
2 affecting Williamson Act land are infeasible.

3 **PRAYER FOR RELIEF**

4 In each of the respects enumerated above, Respondent has violated its duties under law,  
5 abused its discretion, failed to proceed in the manner required by law, and decided the matters  
6 complained of without the support of substantial evidence. Accordingly, the certification of the  
7 EIR and the approval of the Section must be set aside.

8 WHEREFORE, Petitioners pray for relief as follows:

9 1. For an alternative and peremptory writ of mandate, commanding Respondent:

10 A. To set aside and vacate its certification of the EIR, Findings and Statement  
11 of Overriding Considerations supporting the Section;

12 B. To set aside and vacate any approvals for the Section based upon the EIR  
13 and Findings and Statement of Overriding Considerations supporting the Section; and

14 C. To prepare and certify a legally adequate EIR for the Section so that  
15 Respondent will have a complete disclosure document before it, identify for the decision-makers  
16 and public the potential significant impacts of the Section, and enable it to formulate realistic  
17 and feasible alternatives and mitigation measures to avoid those impacts;

18 2. For an order enjoining Respondent and Real Parties in Interest from taking any  
19 action to construct any portion of the Section or to develop or alter the Section site in any way  
20 that could result in a significant adverse impact on the environment unless and until a lawful  
21 approval is obtained from Respondent after the preparation and consideration of an adequate  
22 EIR;

23 3. For costs of the suit;

24 4. For reasonable attorneys' fees; and

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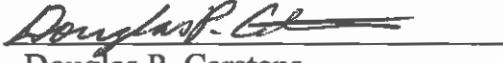
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1       5. For such other and further relief as the Court deems just and proper.

2  
3 DATE: June 4, 2014

4  
5 Respectfully Submitted,  
6 CHATTEN-BROWN & CARSTENS

7  
8 By:   
9 Douglas P. Carstens  
10 Michelle Black  
11 Attorneys for Petitioners

## **VERIFICATION**

I, the undersigned, declare that I am a co-founder and director of Citizens for California High-Speed Rail Accountability, a Petitioner in this action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof, and the same is true of my own knowledge or I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this

4<sup>th</sup> day of June 2014, in Hanford, California.



Aaron Fukuda

# EXHIBIT A

**CHATTEN-BROWN & CARSTENS LLP**

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June 4, 2014

*By U.S. Mail*

Office of the Attorney General  
1515 Clay Street / P.O. Box 70550  
Oakland, CA 94612-0550

Re: Challenge to Certification of Environmental Impact Report for Fresno-to-Bakersfield  
Section of the California High-Speed Rail System, SCH No. 2009091126  
*County of Kings v. California High-Speed Rail Authority*

Honorable Attorney General Harris:

Enclosed please find a copy of the Petition for Writ of Mandate filed by the County of Kings, Kings County Farm Bureau, and Citizens for California High Speed Rail Accountability to challenge the California High-Speed Rail Authority's certification of an environmental impact report for the Fresno-to-Bakersfield Section of the California High-Speed Rail system ("Section").

The Section would run approximately 114 miles though the Central Valley from downtown Fresno to just north of Bakersfield along an alignment that includes important agricultural lands, areas of known cultural and archaeological resources, and parklands acquired with federal funds. The Section's construction and operation will have significant and unmitigated impacts on the agricultural viability of large swaths of the Central Valley, will divide and displace low-income communities and farming communities, and will have adverse impacts on hospitals, air quality, human health, traffic, and biological resources, among others, that have not been properly disclosed, analyzed, or mitigated in the environmental impact report. The Section's construction and operation will also have significant unmitigated impacts on the operations of BNSF railways and on rail safety due to electromagnetic interference with Positive Train Control Systems. The above-referenced agencies and organizations participated in the administrative process for the Authority's EIR but were not properly consulted and coordinated with, and their concerns were not adequately addressed in the final environmental impact report. They file this suit to protect their interests and the interests of their residents and members.

Please call if you have any questions.

Sincerely,



Michelle N. Black

Enclosure: Petition for Writ of Mandate

# EXHIBIT B

**CHATDEN-BROWN & CARSTENS LLP**

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June 4, 2014

**Mr. Jeff Morales**  
Chief Executive Officer  
California High-Speed Rail Authority  
770 "L" Street, Suite 800  
Sacramento, CA 95814

**Re:** Notice of Intent to Challenge Certification of Environmental Impact Report  
and Approval of the Fresno-Bakersfield Section of the California High-  
Speed Rail System  
SCH No. 2009091126

Dear Mr. Morales,

Please take notice that on behalf of the County of Kings, the Kings County Farm Bureau, and the Citizens for California High Speed Rail Accountability we intend to commence an action to challenge the Authority's approval of the Fresno-to-Bakersfield Section of the California High-Speed Rail System, and the May 7, 2014 certification of the environmental impact report prepared for the Section.

Sincerely,



Michelle N. Black

# EXHIBIT C

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Josh Chatten-Brown, SBN 243605  
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Attorneys for Petitioners County of Kings,  
Citizens for California High Speed Rail Accountability,  
Kings County Farm Bureau

**Exempt from Filing Fees  
Pursuant to Government  
Code Section 6103**

COUNTY OF KINGS  
Colleen Carlson, SBN 203120  
Kings County Counsel  
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Attorney for Petitioner County of Kings

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE**

County of Kings, Citizens for California High Speed Rail Accountability, Kings County Farm Bureau } CAS

#### Petitioners.

v.

## **California High-Speed Rail Authority, and DOES 1 through 20**

### **Respondents and Defendants.**

and ROES 1 to 10;  
Real Parties in Interest.

CASE NO.:

**NOTICE OF ELECTION TO PREPARE  
ADMINISTRATIVE RECORD**

[California Environmental Quality Act (“CEQA”), Public Resources Code, sections 21000 et seq.; Proposition 1A, Streets and Highways Code section 2704.09; Anti-Discrimination Law, Government Code, section 11135; and Williamson Act, Government Code, sections 51200 et seq.]

1 PLEASE TAKE NOTICE: Pursuant to Public Resources Code section 21167.6, Petitioner  
2 County of Kings, Citizens for California High Speed Rail Accountability and Kings County  
3 Farm Bureau hereby elects to prepare the administrative record in this action.

4  
5 Date: June 4, 2014

CHATDEN-BROWN & CARSTENS LLP

6  
7 By: Douglas P. Carstens  
8

9 Douglas P. Carstens  
10 Attorneys for Petitioner  
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