

HIGH-SPEED RAIL AUTHORITY  
MONTHLY MEETING  
TRANSCRIPT OF PROCEEDINGS

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SECRETARY OF STATE AUDITORIUM  
1500 11TH STREET  
SACRAMENTO, CALIFORNIA  
TUESDAY, MARCH 11, 2014  
10:11 A.M.

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A P P E A R A N C E S

BOARD MEMBERS

- Mr. Dan Richard, Chair
- Mr. Jim Hartnett, Vice Chair
- Mr. Tom Richards, Vice Chair
- Mr. Rick Frank
- Ms. Katherine Perez-Estolano
- Ms. Lynn Schenk
- Mr. Thomas Umberg

STAFF

- Mr. Thomas Fellenz, Esq., Legal Counsel
- Mr. Russ Fong, Chief Financial Officer
- Mr. Scott Jarvis, Assistant Program Manager
- Mr. Mark Mc Loughlin, Interim Deputy Director
- Mr. Jeff Morales, CFO

ALSO PRESENT

- Mr. Robert Allen,
- Shelli Andranigain, CCHSRA
- Mr Kevin Dayton, President and CEO, Labor Issues Solutions
- Mr. Brad Johns, Hugh V. Johns Farming, Inc.
- Ms. Diana LaCome, APAC
- Mr. Frank Oliviera, CCHSRA
- Mr. Alan Scott, CCHSRA

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1 BOARD CLERK NEIBEL: Mr. Henning?

2 Mr. Frank?

3 BOARD MEMBER FRANK: Here.

4 BOARD CLERK NEIBEL: Chairman Richard?

5 CHAIRPERSON RICHARD: Here.

6 I will ask -- let me just note that Mr. Henning  
7 is not here today because he is attending a funeral of the  
8 mother of a State official.

9 So Ms. Perez-Estolano, could you lead us in the  
10 pledge?

11 (Thereupon the Pledge of Allegiance was  
12 Recited in unison.)

13 CHAIRPERSON RICHARD: Okay. We will begin with  
14 public comment. And we have no elect officials who have  
15 submitted requests today. So we'll just take the public  
16 comments in the order in which the requests were received.  
17 We'll start with Mr. Brad Johns, and he'll be followed by  
18 Robert Allen.

19 MR. JOHNS: Good morning. I just want to say  
20 that I think --

21 CHAIRPERSON RICHARD: Hold on one second, sir.

22 MR. JOHNS: I just want to say thank you for all  
23 your efforts. And to that end I have found some little  
24 mementos I would like to give to all of you.

25 CHAIRPERSON RICHARD: Mr. Johns, I appreciate the

1 mementos. You do know we have restrictions under the gift  
2 laws.

3 MR. JOHNS: I know. These are \$1.98. Trust me.  
4 And they're trains.

5 CHAIRPERSON RICHARD: Why don't you stand back at  
6 the microphone?

7 MR. JOHNS: They're trains. I would like you to  
8 give -- Mr. Richard, I would like you to give this one to  
9 the Governor himself. This is made of iron. It's got a  
10 gold car on it. And since the project is built to last,  
11 iron lasts. And I thought this would be a fitting thing  
12 for the Governor himself. So I would like you to please  
13 present this to the Governor for me if you would, please.

14 CHAIRPERSON RICHARD: All right. Mr. Johns, for  
15 reasons that I hope you'll understand, I'm not going to  
16 commit to doing that at this moment. But I think these  
17 are very nice and may end up in the State Historical  
18 Museum. We'll deal with them appropriately.

19 MR. JOHNS: I understand there was a robbery down  
20 at the Train Museum. These aren't those.

21 CHAIRPERSON RICHARD: Thank you for clarifying  
22 that, sir. Thank you, Mr. Johns.

23 Robert Allen. And he will be followed by Mr.  
24 Frank Oliviera.

25 Mr. Allen, good morning.

1 MR. ALLEN: The ides of March are about here.  
2 I'd like to tell you about an incident that happened in  
3 the ides of March three years -- 15 years ago this week.  
4 The Illinois Central Railroad has track from New York --  
5 from which Chicago to New Orleans. They had Amtrak has  
6 train the city of New Orleans which was derailed at a  
7 crossing. Track speed was estimated at 79 miles an hour.  
8 The train hit a truck loaded with steal. Two locomotives  
9 were derailed. Eleven of 14 cars were derailed. Eleven  
10 passengers were killed, and 122 passengers were injured.

11 I plead with you, don't put high speed rail which  
12 is even faster than 79 miles an hour. Don't put high  
13 speed rail have grade crossings on that. It's just really  
14 deadly.

15 And it's so possible to go up the east side of  
16 the -- go up toward Oakland to get from Oakland across the  
17 Bay to San Francisco, it's a six to ten minute ride on  
18 BART. Trains run of four minutes.

19 I urge you to defer indefinitely the blended rail  
20 proposal from San Jose to San Francisco. For the time  
21 being, terminate high speed rail coming from Merced at San  
22 Jose. People can cross platform transfer to the Cal Train  
23 or at Capitol Corridor. And you can't have much more  
24 speed than Cal Train operates anyway. There's too big a  
25 price to pay to have one -- just to give people one seat

1 from San Francisco down south. It's -- we need to have  
2 safety above all. Please, defer that portion.

3 I've given you a copy of proposed phasing the  
4 first phase being -- after IOS, the first phase north of  
5 Merced being from Merced to San Jose. The second phase  
6 being from Merced to Sacramento. And then a third phase  
7 from Sacramento -- from San Jose up to Oakland where BART  
8 crosses overhead and have a station there, a joint  
9 station. And then the fourth one would be to go onto  
10 Sacramento beyond that. And the fifth phase would be  
11 deferred indefinitely. Even though the law may say that  
12 you have to go to a trans-bay terminal, you don't to do  
13 that right away. I'm urging that you defer that and do  
14 the other phases first. Thank you.

15 CHAIRPERSON RICHARD: Thank you, Mr. Allen.

16 Next, Frank Oliviera followed by Alan Scott.

17 MR. OLIVIERA: Good morning.

18 As you said, my name is Frank Oliviera with  
19 Citizens for California High Speed Rail Accountability.  
20 I've been following this project for four years now. All  
21 this while, we've only asked really one thing, that the  
22 California High Speed Rail Authority comply with all  
23 applicable laws pertaining to this project.

24 In 2008, this project was defined by Proposition  
25 1A. That's what we expect to be constructed in compliance

1 with Prop. 1A.

2           The Authority has failed to do that in their  
3 planning. As a result, a court has certified that your  
4 project is not in compliance with Prop. money. I  
5 understand that that matter is being appealed. But as  
6 things stand today, your project as designed is not in  
7 compliance with the law.

8           I have to ask you the question if you're not  
9 going to comply with the law, why would anybody else have  
10 to comply with the law.

11           Because of these things, you lack public funding.  
12 There was a promise that there would be State, federal,  
13 and private funding. You have no private investors at  
14 this time. That necessitates the use of the next plan,  
15 use of AB 32 funds, greenhouse gas revenue, to fund this  
16 project to the tune of I believe 33 percent of the take in  
17 years coming forward to fund this project.

18           Reality is when this is portrayed as a green  
19 train, it will take decades to reach that point where any  
20 kind of environmental advantage could possibly happen and  
21 in the mean while will take a situation where the area is  
22 polluted and make it worse for decades. Once this project  
23 starts and nets a result assuming tracks forward as you  
24 project, it will take years for you to acquire the  
25 greenhouse gas advances which are advertised to the

1 public.

2           The next problem is population. This project and  
3 ridership is based on population growth. It's my  
4 understanding that the population in California will grow  
5 by tens of millions of people in the next 10 to 20, 30,  
6 years. Reality is if there is no water and we're  
7 rationing water today, we're not addressing that problem,  
8 the population will not grow because people can't live  
9 without water. This project's funding is compromising the  
10 state's ability bonding capacity to build storage  
11 facilities, which it desperately needs and has neglected  
12 for years.

13           The last thing I'd like to throw out is simply  
14 the road argument. I hear constantly what are we going to  
15 do? Where are we going to build more freeways, build more  
16 runways? Reality is that no benefit from this project,  
17 assuming it proceeds forward, will occur to deal with  
18 those issues for decades. Reality is we will build more  
19 freeways. We will build more roads and airport runways in  
20 the mean time because we will have to.

21           Thank you for listening to me today. I ask you  
22 to simply comply with the law.

23           CHAIRPERSON RICHARD: Thank you, Mr. Oliviera.

24           Next, Alan Scott followed by Shelli Andranigain.

25           MR. SCOTT: Good morning, Mr. Chair, members of

1 the Board.

2 Alan Scott, Kings County, founding member of  
3 Citizens for California High Speed Rail Accountability.

4 As Mr. Oliviera said, he's been doing it four  
5 years. I've only been doing it three years. But I've  
6 been noticing in reading documents, not only yours, but  
7 rebuttal documents that a number of words keep cropping up  
8 that have been troublesome to me in the last couple weeks.  
9 I put together a list that I think need to be brought out  
10 in light of what's going on.

11 In the world of Twitter, everything has to be  
12 140, so I'm going to cut it down to less. And I'm not  
13 going to use the hash tag.

14 In alphabetical order starting with "back room  
15 deal, deals, bypassing, cannot reasonably expect,  
16 confusion, distorted plans, drastically worse,  
17 environmental disaster." Again these are words coming  
18 right out of documents that either have been written by  
19 you or by anybody else commenting on this project.

20 "Failed too" and then in parentheses "too many  
21 words to enter after too, failure to complete the  
22 comprehensive analysis, financial fitness and failures."  
23 And I went on the line to look up Monte Carlo method  
24 process. And one thing that I noticed on three of the  
25 pages I was on -- three of the sites I was on, all by

1 Ph.D.s, mathematicians saying only one problem with the  
2 Monte Carlo process. And that is if anything -- any  
3 information being put in there is wrong, the information  
4 is wrong coming out.

5 And that's been proven over the years with the  
6 ridership and everything else.

7 Continuing on, "gross violation of due process,  
8 inadequate irregularity or irregularities,  
9 misrepresentation, no coordination. In the case of Kings  
10 County, "ever no justification, unsupported no service,"  
11 so on so forth. I go on.

12 But then let me just jump to the end. The  
13 majority of us would like to love to see the following  
14 four words or phrases utilized rather than the above.  
15 Since you have been chasing a clearly political project  
16 only, the failings to date are because you have failed to  
17 use these words or phrases that without question would  
18 have been paramount, not only in your vision statement, if  
19 you have one, but in everything else you do. You have a  
20 fiduciary and morale responsibility to do so, not a  
21 political responsibility.

22 I'm willing to bet utilization of these quality  
23 tenants without reservation would have eliminated 99  
24 percent of the problems that you've had. And they are  
25 "professionalism, ethical standards, reliability," and

1 above all, "integrity."

2           And in closing, if you dispute what I have  
3 presented, I'm happy to provide support for each one of  
4 these 35 items. And I just did the research so I can pick  
5 it up easy. Furthermore, I would be happy to provide  
6 specific examples. However, given that I've only had two  
7 minutes, and I understand you've let me go and I  
8 appreciate that time -- I passed the two minutes -- but I  
9 will be able to avoid the one phrase that I got for 18  
10 times on my public records request, "the Authority has no  
11 record regarding this request."

12           Basically, what I'm saying is to what Mr.  
13 Oliviera said, the bottom line is we ask for transparency.  
14 We ask for responsibility. And we ask for utilization of  
15 taxpayer money properly. And we don't want to have a  
16 system that's being built that's going to hamstring this  
17 state forever and ever, a generational disaster.

18           Thank you very much for your time.

19           CHAIRPERSON RICHARD: Thank you, Mr. Scott.

20           Ms. Shelli Andranigain followed by Ms. Diane  
21 LaCome.

22           MS. ANDRANIGAIN: Good morning, Chairman Richard,  
23 CEO Morales, Vice Chair Richards, Vice Chair Hartnett,  
24 members of the Board, and staff, along with those here  
25 today.

1 My name is Shelli Andranigain. I'm with the  
2 Citizens for California High Speed Rail Accountability. A  
3 year ago next month, April, the CHRA monthly Board meeting  
4 was held in Fresno County. We'd like to know when you're  
5 going to have your monthly Board meeting in Kings County.

6 CHAIRPERSON RICHARD: Ms. Andranigain, it's your  
7 turn to speak to us. We generally do not engage in a back  
8 and forth on these. But I understand your question and --

9 MS. ANDRANIGAIN: That's all I have for now.  
10 Thank you.

11 CHAIRPERSON RICHARD: Thank you.

12 Diane LaCome followed by Kevin Dayton.

13 MS. LACOME: Good morning, Chairman Richard, CEO  
14 Morales, and members of the Board.

15 I'm Diana LaCome, President of APAC. And today I  
16 wanted to talk about the small businesses and their  
17 participation. You bundled instead of unbundled CP 2 and  
18 3 and the CM 2 and 3. And we believe that one way to  
19 actually meet the 30 percent commitment that the Authority  
20 has made is to take a serious look at fostering small  
21 businesses.

22 And I've asked -- I made some copies of the  
23 federal regulations for all of you to review. It's 49 CFR  
24 Part 39. And what I wanted to really stress here is that  
25 this is a good way to do set-asides for small business.

1 But the Authority can't do it because it does not have a  
2 certification program for the set-asides. You do not --  
3 you cannot use the DBE. The small businesses for the  
4 state certification DGS, that does not apply either. So  
5 you need your own certification process, or borrow one.  
6 You know, there are different standards, that's why you  
7 can't use the others. Although the DBE does qualify that  
8 standard.

9 But what I did want to leave here with you is a  
10 copy of BART. BART has its own certification application  
11 for the set-asides, for the fostering of small business.  
12 And they called it a micro-small business entity. There's  
13 nothing really micro about it as far as I'm concerned.  
14 It's three years not to exceed 22.41 million for small  
15 business. But I think that perhaps your staff can make  
16 copies of this because I think it's really not that  
17 difficult. It's not that different from DBE. But I think  
18 it can be done quickly and in time to really impact both  
19 the CEM and the construction packages. Thank you very  
20 much.

21 CHAIRPERSON RICHARD: Thank you, Ms. LaCome.  
22 We'll ask the staff to look at that.

23 Mr. Dayton, good morning.

24 MR. DAYTON: Good morning. Kevin Dayton,  
25 President and CEO Labor Issues Solutions in Roseville. I

1 have over the past month been trying to encourage people  
2 to look at the 2014 draft business plan. I've had mixed  
3 success doing it. I have to admit I haven't found anybody  
4 who's been able to go through the whole thing.

5           As I mentioned last month, it's a difficult read,  
6 a tedious read. It's not well organized for the layman.  
7 I'm not sure the way it's formatted now the state  
8 Legislature is going to find much value in it. I once  
9 again ask you to redraft that in a way that has a lot of  
10 charts and graphs that makes it easy for somebody to look  
11 at it and figure out what's going on, both good and bad.

12           I'll give you a few examples of some of the  
13 things -- I said a few things last month. I'll add more  
14 this month. For example, on page 20 it mentions nine  
15 billion dollars of State bond money to be spent on this  
16 project. Well, unless you're real clued in on what's  
17 going on, you're going to wonder where the 950 million is  
18 on it. And maybe you need a footnote or something in  
19 there pointing out the other 950 million is for  
20 connectivity type projects.

21           On page 3, the report mentions that it will go  
22 from San Francisco to Los Angeles in under three hours.  
23 Somebody is going to look at that and going to say I  
24 thought it was supposed to go from San Francisco and Union  
25 Station in two hours 40 minutes. Once again, that needs

1 to be clarified for the reader who's not clued in on  
2 what's going on.

3           Some of the other things, I think the issue of  
4 how the bond interest is going to be paid for with the  
5 vehicle weight fees.

6           Heavy maintenance facility, this is a big, big  
7 issue for Fresno. It needs to be mentioned in there.  
8 What's going on with that. Who applied for it. What's  
9 the status of the applications and the choosing of where  
10 the heavy maintenance facility is going to be.

11           There should be a chart in there talking about  
12 the bond sales that have actually occurred so far because  
13 most people are pretty stunned to there are bonds being  
14 sold for various aspects of the high speed rail plan.  
15 These are some of the issues that I see.

16           Once again, I urge to you take a look at that and  
17 put together a resource that can be used by the  
18 Legislature and allows the public to know what's going on  
19 so you can move forward.

20           CHAIRPERSON RICHARD: Thank you, Mr. Dayton. I  
21 think those are very constructive suggestions and I  
22 appreciate them.

23           So this is the time period in which we are taking  
24 public comment on the draft 2014 business plan. And so we  
25 appreciate members of the public giving us that kind of

1 input. And I know our CEO is taking notes right now. So  
2 that's good. Thank you.

3 That concludes the public comment period in terms  
4 of the materials -- the requests that we have. So with  
5 that, public comment period is closed. And we'll move to  
6 the regular agenda order.

7 The first item of business, as is always the  
8 case, is the approval of minutes from prior Board meeting.  
9 Do we have a motion on that approval of the minutes?

10 BOARD MEMBER UMBERG: Moved.

11 CHAIRPERSON RICHARD: Moved by Director Umberg.

12 BOARD MEMBER FRANK: Second.

13 CHAIRPERSON RICHARD: Seconded by Director Frank.  
14 Secretary, please call the roll.

15 BOARD CLERK NEIBEL: Vice Chair Richards?

16 VICE CHAIRPERSON RICHARDS: Yes.

17 BOARD CLERK NEIBEL: Vice Chair Hartnett?

18 VICE CHAIRPERSON HARTNETT: Yes.

19 CHAIRPERSON RICHARD: Mr. Umberg?

20 BOARD MEMBER UMBERG: Aye.

21 BOARD CLERK NEIBEL: Ms. Schenk?

22 BOARD MEMBER SCHENK: Yes.

23 CHAIRPERSON RICHARD: Ms. Perez-Estolano?

24 BOARD MEMBER PEREZ-ESTOLANO: Yes.

25 BOARD CLERK NEIBEL: Mr. Frank?

1 BOARD MEMBER FRANK: Yes.

2 BOARD CLERK NEIBEL: Chairman Richard?

3 CHAIRPERSON RICHARD: Yes. Thank you.

4 Okay. Item three is a consent item, Finance  
5 Audit. What do we have here, Mr. Morales?

6 CHIEF EXECUTIVE OFFICER MORALES: Simply --

7 CHAIRPERSON RICHARD: I know the Secretary of  
8 State personally. I know she cares about public  
9 transparency, so we need to get her to have the  
10 microphones work a little better.

11 CHIEF EXECUTIVE OFFICER MORALES: Mr. Chair, last  
12 month when the Finance and Audit Committee materials were  
13 presented, one of the things that was discussed at some  
14 length and was of real concern was the aged payments  
15 report, and particularly the impact on small businesses.  
16 And what we want to report to the Board and to the public  
17 is some very good news on that front that reports on very  
18 important progress on the aged payment process going back  
19 from the report last month.

20 We have submitted and received in fact payment  
21 for 57 million of the outstanding balance. And that  
22 has -- should have been paid to the contractors, both  
23 private and small business. Very important piece of  
24 progress. Appreciate greatly the work to approve those  
25 and to work through that process. And did just want to

1 report back to the Board and to the public that issue.  
2 We're now current with the mast majority of our payments  
3 and are continuing to make progress on that front.

4 CHAIRPERSON RICHARD: Well, as a former small  
5 business owner, I can tell you that I think that's very  
6 welcome news. This is something that's been vexing to a  
7 lot of us. And I know, Mr. Morales, that you have been  
8 personally engaged in trying to resolve this issue. And I  
9 think I speak for all of us in saying that we want this  
10 body to be a good organization for people to do business  
11 with. So this is really important. So thank you for  
12 staying on top of this.

13 And thanks to our friends at the Federal Railroad  
14 Administration for getting the processing of the funding  
15 going so that we can make these payments.

16 Any other comments from members of the Board?

17 BOARD MEMBER PEREZ-ESTOLANO: I have a question,  
18 yes.

19 CHAIRPERSON RICHARD: Yes, Ms. Perez-Estolano.

20 BOARD MEMBER PEREZ-ESTOLANO: Good morning. I  
21 just have a quick question.

22 On the chart, Jeff, what we have is basically the  
23 accounts payable aging report, but then we also have the  
24 forecast balance pending which means we've got funds still  
25 outstanding from FRA. And the obviously the ones that are

1 outstanding, over 120 days up to a year, are there reasons  
2 why we have payments outstanding that length of time? If  
3 we've been cleared out? And I know Russ mentioned we were  
4 going to clear out a whole bunch and we did. But there is  
5 still this outstanding 2.1 that is outstanding.

6 CHIEF EXECUTIVE OFFICER MORALES: I'll ask Russ.

7 CHIEF FINANCIAL OFFICER FONG: Good morning.

8 Russ Fong, Chief Financial Officer.

9 If you look at the report for this month, you'll  
10 notice about a six million dollar balance. The majority  
11 of that are disputed invoices. We're working with the  
12 vendors on seeing if those should be paid or not.

13 The remaining about two to a little bit under  
14 three million dollars are mostly to other State agencies  
15 who are apparently waiting for FRA to reimburse for cash  
16 from last year so we can make those payments. It's either  
17 half of it's State agencies, reimbursements for Prop. 1A  
18 funds, cash to be returned approved by the FRA, and the  
19 other three millions are disputed invoices.

20 BOARD MEMBER PEREZ-ESTOLANO: Okay.

21 CHIEF FINANCIAL OFFICER FONG: Once those are  
22 cleared, we'll be caught up on our invoices.

23 BOARD MEMBER PEREZ-ESTOLANO: You've done a lot  
24 to do it. I just want to make sure I understood where we  
25 are at with this outstanding amount. Thank you very much.

1           CHAIRPERSON RICHARD: Thank you. We'll move  
2 on to the next item of the agenda, which is the  
3 presentation of the information on -- sorry -- to the  
4 approval of Board action approval of the requested  
5 proposal for Construction Package 2 and 3 of the design  
6 build contract.

7           So Mr. Morales, do you want to introduce this?

8           CHIEF EXECUTIVE OFFICER MORALES: Just very quick  
9 by introduction.

10           As the Board knows, we have gone through the RFQ  
11 process for Construction Package 2-3 in which we've  
12 received five proposals or statements of qualification  
13 from teams. Again, world class teams. We've now  
14 proceeded through the review of their qualification and  
15 are prepared to move ahead and issue the RFP to the firms  
16 we determined to be qualified.

17           So Mr. Jarvis will now present the specifics of  
18 what that RFP process will look like.

19           CHAIRPERSON RICHARD: Good morning.

20           ASSISTANT PROGRAM MANAGER JARVIS: Good morning,  
21 Chairman Richard and Board members. My name is Scott  
22 Jarvis. I'm the Assistant Program Manager for the  
23 Authority.

24           As Mr. Morales said, the purpose of this  
25 presentation is to seek Board approval to proceed with the

1 request for proposal for Construction Package 2-3 which is  
2 a design-build contract and to proceed in accordance with  
3 the terms contained in the term sheet.

4           And so the initial -- for some background  
5 information, the initial operating segment of the  
6 California High Speed Rail System will run through the  
7 Central Valley, including the counties of Madera, Fresno,  
8 Tulare, Kings, and Kern.

9           The California High Speed Rail Authority awarded  
10 a contract for design and construction of Construction  
11 Package 1, the first 29 miles of the first construction  
12 segment. We refer to it as the FCS. We awarded that in  
13 June of 2013. Construction of the FCS involves  
14 design-build contracts for the final design and  
15 construction of all high speed rail trackway  
16 infrastructure up to the subgrade of the ballast. A final  
17 contract will ultimately be entered into for the track  
18 along the entire length of the FCS.

19           So the Authority has started -- as was mentioned,  
20 the Authority has started a two phase procurement process  
21 for the second of a design-build contracts designated as  
22 Construction Package 2-3, which will extend in excess of  
23 60 miles in length through the Central Valley.

24           In response to the first phase, requests for  
25 qualifications, RFQ, that was issued by the Authority in

1 October of 2013 and five teams submitted statements of  
2 qualifications. And we went through an extensive review  
3 and evaluation to establish a list of highly qualified  
4 design-build teams. And those teams are now invited to  
5 participate in the second phase, requests for proposal.  
6 RFP.

7 And the proposals submitted by the teams in  
8 response to the RFP will be thoroughly evaluated and  
9 scored to determine the team offering the best overall  
10 value. The scoring will likely be weighted 30 percent on  
11 technical and 70 percent on price. A recommendation to  
12 the Board to enter into a design-build contract with a  
13 selected team is expected to take place during the winter  
14 of 2014/15.

15 So to aid the Authority in the final development  
16 of the RFP documents, a term sheet containing a summary of  
17 the major material terms and conditions of CP 2-3,  
18 including the Authority's goal of a 30 percent small  
19 business participation, was developed and is also  
20 presented to the Board for approval.

21 Also to partially compensate for the cost of the  
22 preparation of the proposal submitted and to secure the  
23 benefits of their work product, the Authority can pay a  
24 stipend to those proposer teams not awarded the contract.  
25 A stipend may be paid for each responsive proposal

1 submitted to the Authority by a proposer that is not  
2 awarded the contract or in case of termination of the RFP.  
3 The stipend will be based on proven cost, not the exceed  
4 \$2 million.

5 So staff recommends Board approval to proceed  
6 with the RFP for Construction Package 2-3 design-build  
7 contract in accordance with the terms contained in the  
8 terms sheet and to include a stipend in the amount of up  
9 to \$2 million for proven costs. This is pursuant to the  
10 terms of the attached Board Resolution HSRA number 1405.

11 CHAIRPERSON RICHARD: Thank you, Mr. Jarvis.

12 Questions or comments from members of the  
13 Authority?

14 BOARD MEMBER PEREZ-ESTOLANO: Mr. Chair.

15 CHAIRPERSON RICHARD: Go ahead.

16 BOARD MEMBER PEREZ-ESTOLANO: Thank you. Thank  
17 you very much, Chair.

18 Scott, what I'd like to ask is the process for  
19 inviting the five teams to participate in the RFP process,  
20 that's a criteria that each of them passed; is that  
21 correct?

22 ASSISTANT PROGRAM MANAGER JARVIS: Yeah. We went  
23 through a statement of qualification period request for  
24 qualification, and we evaluated the offers'  
25 qualifications. Yes, all five passed through that

1 qualification and have been short listed to ask to submit  
2 proposals. That's correct.

3 BOARD MEMBER PEREZ-ESTOLANO: Thank you. Not all  
4 of them to respond. They can chose not to, but they're  
5 invited to participate

6 ASSISTANT PROGRAM MANAGER JARVIS: That's  
7 correct.

8 BOARD MEMBER PEREZ-ESTOLANO: It is in the  
9 interest, and as a Board member for me, to have as many  
10 good ideas come to this project in terms of building out  
11 Construction Package 2 and 3.

12 ASSISTANT PROGRAM MANAGER JARVIS: Yes.

13 BOARD MEMBER PEREZ-ESTOLANO: That's our interest  
14 is to have as many good ideas come in the form of RFP  
15 response.

16 ASSISTANT PROGRAM MANAGER JARVIS: Correct

17 BOARD MEMBER PEREZ-ESTOLANO: I would understand  
18 there's some teams that would say if there are so many  
19 participants in the RFP pool that might diminish our  
20 opportunity, given there are so many in the pool. But as  
21 we are concerned, we are trying to get the best ideas and  
22 the best value for the project.

23 ASSISTANT PROGRAM MANAGER JARVIS: Correct.

24 BOARD MEMBER PEREZ-ESTOLANO: So I just want to  
25 make clear that in my opinion, what I have seen, is that

1 if you've got other competitors that it should be a very,  
2 very good proposal that will succeed, and that for us, in  
3 our interest to be able to have as many good ideas. And  
4 if they do agree to participate and they do receive the  
5 two million dollar stipend, the high speed rail system  
6 will benefit from those ideas as well.

7 ASSISTANT PROGRAM MANAGER JARVIS: That is  
8 correct, yes. And with the stipend payment, I mean, we  
9 certainly have ownership of the ideas in the proposal  
10 after the proposals are submitted. So those are  
11 innovative ideas that the Authority could possibly use for  
12 an effective and efficient delivery of the system.

13 BOARD MEMBER PEREZ-ESTOLANO: Well, I appreciate  
14 that. I just would like to make clear to the industry  
15 they're very excited about the ideas that are going to be  
16 generated and certainly invite as many to participate who  
17 have been invited, but that's that business that we're in  
18 is to try to pick the best team for the project.

19 And that we hope that the international community  
20 also understands what we are doing and that this is a big  
21 project. And there is other CPs phases we're going to be  
22 going through. But that, in my opinion, I think it's good  
23 that we have five qualified teams that are submitting on  
24 this project. So great job.

25 CHAIRPERSON RICHARD: Thank you. Mr. Umberg.

1 BOARD MEMBER UMBERG: Quick question. In the  
2 past, we've had qualified teams not actually submit  
3 proposals. Do you expect all five to submit proposals?

4 ASSISTANT PROGRAM MANAGER JARVIS: You know, I  
5 can't say that with certainty, but the expectation is yes,  
6 that all five will submit proposals. And we expect a very  
7 competitive process.

8 BOARD MEMBER UMBERG: Thank you.

9 CHAIRPERSON RICHARD: I would just point out that  
10 in the Construction Package 1 situation, we have five  
11 pre-qualified teams and was some concern on the part of  
12 the Authority members as to whether we were going to get  
13 robust composition, exactly the point Ms. Perez was just  
14 raising. And we saw that all five of those proposers bid.

15 And I know that some in the public had a hard  
16 time understanding why we would pay a two million dollar  
17 stipend to the losing bidders. But that engineer's  
18 estimate on the first construction package was that those  
19 bids would come in between 1.2 and \$1.8 billion. And in  
20 fact, it came in at 985 million. So some 25 to 40 percent  
21 below the engineer's estimate.

22 I personally think that knowing there is  
23 competitive forces out there attributes to getting lower  
24 prices. So for a total of up to eight million -- we don't  
25 have to pay the whole thing. But up to eight million, we

1 saved hundreds and hundreds and hundreds of millions of  
2 dollars.

3           And Mr. Jarvis made a point that I think is  
4 really worth emphasizing. In return for agreeing to pay  
5 that \$2 million, the High Speed Rail Authority then owns  
6 the intellectual property of all of the proposers. What  
7 that means is literally if somebody had a good idea that  
8 wasn't in the winning bid, we could inject that into the  
9 winning bidder's program.

10           So I would say that I understand for some this is  
11 hard to comprehend, but it's a very good business decision  
12 to pay these stipends. They generate competition that  
13 leads to dramatically lower prices. And they do exactly  
14 what my colleague Ms. Perez-Estolano suggested we want to  
15 see, which to generate good ideas that we can benefit  
16 from, even if they come from a losing bidder.

17           So I just thought it was worth taking a moment  
18 and emphasizing those aspects of that because for the  
19 average citizen it may not be clear why we would pay a  
20 losing bidder. But it's also my understanding that these  
21 bidders, this is a huge project. They're paying eight and  
22 ten million dollars to put these bid packages together.  
23 The stipend that we're paying them does not compensate  
24 them for the entire cost of that.

25           Mr. Morales made another point on this the other

1 day about the benefit of the stipend to small businesses.  
2 And Jeff, that was your comment -- I'd like you to just  
3 repeat that here, because I think that that -- I think you  
4 were the one who made it. He's looking at me strange.  
5 Somebody said to me in the discussion we had -- Mr.  
6 Jarvis, I think you made or somebody did -- that in fact  
7 that the benefit of the stipend tends to go to the small  
8 businesses because the big companies take the cost of  
9 doing business of losing bids into consideration when  
10 they're pricing their bids. But when they go out and ask  
11 the small businesses to participate in that bid  
12 preparation, those companies really can't afford that.

13           So in practical terms, what tends to happen, I'm  
14 told by staff, is that the stipend tends to flow through  
15 to the smaller businesses on the project teams. I know  
16 Mr. Morales would have made that point had he thought of  
17 it. But somebody else on his staff did. So he gets an  
18 assist for bringing that person in.

19           ASSISTANT PROGRAM MANAGER JARVIS: I will just  
20 emphasize we've been able to verify what you just said as  
21 far as the money flowing through to local and smaller  
22 businesses with the stipends in our review of the cost.

23           CHAIRPERSON RICHARD: So it's good business. Any  
24 other comments or questions?

25           Vice Chair Richards.

1           VICE CHAIRPERSON RICHARDS: Thank you, Mr.  
2 Chairman.

3           Following your comments, two things that I think  
4 you made clear, but just to be sure that the public heard  
5 it.

6           First of all, to get the stipend, the qualified  
7 bidders have to provide a responsive RFP. They just  
8 simply don't get it because they were one of the five.

9           And secondly, the other thing that I think that  
10 we all know is they have to also prove the cost. So I  
11 think the Chairman is correct that the cost of the  
12 responding is substantially more than the two million. If  
13 they can't prove cost to two million, they don't simply  
14 get \$2 million. So I just wanted to point those things  
15 out.

16           I do have a couple of questions for you, Scott,  
17 if you don't mind.

18           The first is it's easy to understand in the  
19 rating the 70 percent on cost. What's involved in the  
20 technical portion of the review?

21           ASSISTANT PROGRAM MANAGER JARVIS: There's four  
22 main areas. One deals with the proposer's project  
23 management plan. The other deals with design  
24 considerations and their design innovation. The other is  
25 the construction aspect of the firm for managing the

1 construction of the project and construction oversight.  
2 And the fourth area has to do with their small business  
3 program plan. So those are the four primary areas.

4 VICE CHAIRPERSON RICHARDS: So as I recall, I  
5 think Jeff -- and CP 1, there were perhaps one or two  
6 proposers who didn't do much on the design part. So Scott  
7 and Jeff, I assume that means that probably impacts them  
8 negatively on the technical scoring.

9 ASSISTANT PROGRAM MANAGER JARVIS: Absolutely.  
10 Yes.

11 VICE CHAIRPERSON RICHARDS: Okay.

12 ASSISTANT PROGRAM MANAGER JARVIS: We think we've  
13 really been able to put together a very good RFP package  
14 that requires specific documents from the proposers. So  
15 we'll be able to really see the value that we get from  
16 their proposal.

17 VICE CHAIRPERSON RICHARDS: I know I asked this  
18 question at CP 1, but let me ask it one more time this  
19 time. So it's common on large projects like this I'm to  
20 understand there is a limitation on retainage in this  
21 instance. It's five percent capped at ten million. And  
22 that's consistent with the government contracting process;  
23 is that correct?

24 ASSISTANT PROGRAM MANAGER JARVIS: That's  
25 correct, yes.

1           VICE CHAIRPERSON RICHARDS: So it's unlikely  
2 there are caps that are greater than ten million?

3           ASSISTANT PROGRAM MANAGER JARVIS: Yeah, well,  
4 it's five percent up to ten million dollars. Correct.

5           VICE CHAIRPERSON RICHARDS: Okay. I mean, I  
6 guess the question I always -- that always came to my mind  
7 on a project of this size, it's not a large retainage. So  
8 I just want to be certain that it's consistent with what  
9 is expected in the government contract arena.

10          ASSISTANT PROGRAM MANAGER JARVIS: We are  
11 consistent with that.

12          VICE CHAIRPERSON RICHARDS: In the section that  
13 talks about flow excessive belongs to either the  
14 contractor or the Authority, what does that mean and how  
15 is that determined?

16          ASSISTANT PROGRAM MANAGER JARVIS: Well, that has  
17 to do with the scheduling of the project and what's known  
18 as the critical path method, CPM. With every project  
19 construction or otherwise, there's one longest path to  
20 complete the project. But there are many paths to get to  
21 the actual completion of the project. So many of the  
22 other paths, they are not the longest path. So those  
23 individual paths could be delayed and not delay the  
24 overall completion of the project. So that time period  
25 where one of those non-critical paths could be delayed,

1 that's referred to as project float.

2           So the way the specifications are set up is that  
3 either party, the contractor or the Authority, that's a  
4 resource for the use really for the project. And so if  
5 either party delays one of those non-critical paths, they  
6 can use that float as a resource. So, for example, if  
7 there is some float on a path and there is an Authority  
8 caused delay, we would be able to use that as a resource  
9 and not have to provide a time extension to the contractor  
10 because it didn't delay the overall completion of the  
11 project.

12           VICE CHAIRPERSON RICHARDS: So it's a float is  
13 related to time, not money just time.

14           ASSISTANT PROGRAM MANAGER JARVIS: Yes. It's a  
15 time resource.

16           VICE CHAIRPERSON RICHARDS: Okay. Thank you. On  
17 the limitation of contractor's liability is this also  
18 common then that the amount of exposure is limited to 40  
19 percent of the contract funds?

20           ASSISTANT PROGRAM MANAGER JARVIS: I'm not sure.  
21 Brian, could you answer that?

22           MR. PAPERINICK: Brian Papernick with the Nassau  
23 firm assisting the Authority.

24           We did an analysis of many common projects and it  
25 is common to have some limitation. It's -- for a lot of

1 these firms, it's a go, no-go for them. So when  
2 Construction Package 1 first came out, we did not have  
3 that in there. But it's something that we considered.  
4 And it's important to note that it's not an absolute  
5 limitation. But things like being able to complete the  
6 contract is not within that limitation and there are other  
7 exceptions outside of that limitation. So we felt that it  
8 was appropriate.

9 VICE CHAIRPERSON RICHARDS: So this might be a  
10 limitation that's in addition to any bonding requirements  
11 that a contractor has?

12 MR. PAPERINICK: Right. Or on top of insurance.  
13 If there is insurance, it would be on top of that. It  
14 if's fraud, that doesn't include. If it's indemnity,  
15 that's outside of it.

16 VICE CHAIRPERSON RICHARDS: Okay. Thank you very  
17 much.

18 CHAIRPERSON RICHARD: Thank you, Mr. Richards.  
19 Other questions?

20 Ms. Schenk.

21 BOARD MEMBER SCHENK: Well, again, just for the  
22 record and so the public knows, each of us was given the  
23 opportunity to meet with staff either in person or  
24 telephonically to take a real deep dive on this and most  
25 of us took advantage of that. And there were a number of

1 questions, many of which were covered regarding stipend,  
2 et cetera.

3 I just want to say that if my questions were  
4 fully answered. But in the interest of the record, if,  
5 Scott, you would talk about the substantial completion  
6 liquidated damages issue, the issue that in past years  
7 would rear its ugly head where we would get lower bids but  
8 quality of material and other kind of things were low  
9 balled. And then we got request for changes orders which  
10 sort of were automatically signed off on. So the kinds of  
11 things that we discussed. And as I say, I'm now confident  
12 we've done the best we can on these kinds of issues. But  
13 if you would just expound on that a little bit.

14 ASSISTANT PROGRAM MANAGER JARVIS: Well, the  
15 contract is clear on any type of non-conforming work that  
16 at any time prior to substantial completion, even if there  
17 may have been approval of the work at the time through the  
18 independent checking engineer and independent site  
19 engineer, could be a couple years later, if there is a  
20 determination that the work is not conforming and doesn't  
21 meet the requirements of the contract, the Authority would  
22 require the contractor to repair that work and to restore  
23 it at its own cost.

24 In addition, there is a two-year warranty on  
25 workmanship and materials after substantial completion of

1 the project. So the Authority is protected in that manner  
2 as well.

3           And then as far as change orders, we have a very  
4 rigorous process in place. We have formed a Contract  
5 Change Order Committee, and that most changes of any  
6 significance go through this Committee of Authority  
7 management. And there is approval of the change order  
8 concept before it actually moves forward towards an  
9 approved change order. So that kind of summarizes some of  
10 the protections in place.

11           In addition, there is a 50 percent performance  
12 bond on the contract and 100 percent payment bond, in  
13 addition to the retainage that's been discussed. So  
14 there's many contract protections in place to ensure that  
15 the quality of the work and materials meets the contract  
16 requirements.

17           As far as liquidated damages, if the contractor  
18 does not complete the work within the number of specified  
19 contract working days, the contractor will be assessed  
20 liquidated damages, which certainly pays for the  
21 Authority's cost and overhead cost of administering the  
22 contract.

23           BOARD MEMBER SCHENK: I was pleased to learn that  
24 we've learned from the long ago mistakes of other  
25 agencies. So thank you.

1 CHAIRPERSON RICHARD: Mr. Frank.

2 BOARD MEMBER FRANK: Thank you, Mr. Chairman.

3 Going back to the stipend issue, I must confess  
4 in reviewing the materials for this item, that is the one  
5 provision that jumped out and caught my attention. And  
6 last week when I had my opportunity to be briefed by the  
7 staff, I had some rather direct questions for the staff.

8 And I also wanted to just indicate I was  
9 satisfied with their remarks and I very much appreciate  
10 your setting the context and providing the background, Mr.  
11 Chairman.

12 I guess the only question I had is with respect  
13 to those stipends. Are they -- the award of those  
14 stipends to any unsuccessful bidders, are those under the  
15 discretion of the Authority as delegated to the staff or  
16 are those automatic with any and all unsuccessful bidder?

17 ASSISTANT PROGRAM MANAGER JARVIS: They're not  
18 automatic. It does have to be an acceptable proposal that  
19 is submitted. In addition, we do audit the costs to  
20 verify they're proven costs and that the costs are at  
21 least \$2 million. But what has been discussed is that the  
22 actual costs are substantially in the excess of \$2 million  
23 to prepare these proposals. We've also done research to  
24 look at or public agencies and their stipend amount. And  
25 many of the stipend amounts for large design-build

1 contracts are far in excess of the \$2 million we're  
2 paying.

3 BOARD MEMBER FRANK: With all these explanations  
4 I'm at this point comfortable with those provisions.  
5 Thank you very much for that.

6 CHAIRPERSON RICHARD: Thank you, Mr. Morales.  
7 You had a point you want to make.

8 CHIEF EXECUTIVE OFFICER MORALES: I just want to  
9 get back to the question Mr. Umberg raised and knowing our  
10 words get parsed very carefully here about our  
11 expectations as far as how many bids will ultimately be  
12 submitted. We have -- last time, we did have five  
13 qualified firms who went through the entire process and  
14 submitted proposals in the end. We've had five teams  
15 submit. There is some overlap from the teams of CP 1 and  
16 now CP 2-3. We also have some new players.

17 I just want to be very careful to say there is no  
18 guarantee all five will go through the entire process. I  
19 didn't want anyone to walk away with that impression. The  
20 combination of a number of things we do including the  
21 stipends are designed to try to keep people in the  
22 process. And we've worked through the process to try to  
23 address any issues that come up with bidders. But they do  
24 make business decisions so there is a chance that not all  
25 five will submit.

1           But at this point, all five have gone to the  
2 efforts of submitting their qualifications indicating  
3 their interest. And we are hopeful that we'll keep all  
4 five throughout the whole process.

5           CHAIRPERSON RICHARD: Thank you. That's  
6 important.

7           BOARD MEMBER PEREZ-ESTOLANO: Go ahead.

8           CHAIRPERSON RICHARD: Mr. Hartnett was next.  
9 I'll come back to you.

10          VICE CHAIRPERSON HARTNETT: Thank you, Mr. Chair.

11          Also I think it's important to remember that  
12 we've been through this before. We did do really  
13 extensive analysis when we did our first construction  
14 package. And I think it was constructive to us at that  
15 time in terms of the extensive analysis and comment we had  
16 on the first package. And it helped inform us as utilized  
17 this second/third package. And there are some changes to  
18 this package as a result of our experience in the first to  
19 the better.

20          But in addition to having the opportunity for  
21 recent briefings, I just want people to really understand  
22 that there have been hours and hours spent on these terms  
23 and conditions cumulatively leading up to the day,  
24 including the analysis of the first package.

25          CHAIRPERSON RICHARD: Ms. Perez-Estolano.

1           BOARD MEMBER PEREZ-ESTOLANO: I apologize, Scott.  
2 I forgot to ask this before.

3           I'm not an engineer. I'm a planner and real  
4 estate person. So I don't know what ballast is. I looked  
5 it up. And it is what I think it is, but I don't  
6 understand the terms under which you used it in this  
7 statement. So in future if you could try to help those of  
8 us who don't live and breathe engineering terminology to  
9 at least explain what those things are so that we can  
10 follow and understand what you're trying to communicate.  
11 By the way what is a --

12           ASSISTANT PROGRAM MANAGER JARVIS: It's just  
13 simply the crushed rock, the aggregate placed on top of  
14 the rail bed itself. So this is certainly for these  
15 construction packages is that we're constructing the  
16 embankment, the bridges, the tunnels, everything up to the  
17 track work itself and associated materials that go with  
18 the track work, such as the ballast. So --

19           CHAIRPERSON RICHARD: A pile of rocks.

20           BOARD MEMBER PEREZ-ESTOLANO: Got it. That's  
21 what I thought it was. Okay. Thank you.

22           CHAIRPERSON RICHARD: I just want to point out  
23 that at last month's meeting Ms. Rivera, our auditor, said  
24 I'm not an engineer and I don't plan to become an  
25 engineer. And I went up to her afterwards and asked her

1 if that's what passed for auditor humor. I just want to  
2 recognize a flash back.

3 CHIEF EXECUTIVE OFFICER MORALES: She kills at  
4 the auditor parties.

5 BOARD MEMBER FRANK: Mr. Chairman, my colleague  
6 can take some comfort from the fact I had exactly the same  
7 question. That was my first question to staff last week  
8 when I had my briefing what the definition of this term  
9 was.

10 CHIEF EXECUTIVE OFFICER MORALES: It's an example  
11 of where we make a major point of this being a  
12 design-build procurement and part of this goal is to get  
13 innovative creative ideas. At the same time, we have to  
14 set certain standards and establish design standards so  
15 they all know what they're bidding against. And ballast  
16 is an exact of that where we made a system-wide decision  
17 to go with the ballasted track and there are lots of  
18 reasons for doing that. Everything from noise attenuation  
19 to ease of maintenance to dealing with issues like  
20 subsidence. That's an explicit mechanism for dealing with  
21 that. So that's why that term is in there because that's  
22 guidance given to all of the bidders so they know where  
23 their room for creativity is and isn't.

24 CHAIRPERSON RICHARD: Just on that point or the  
25 antonym for unballasted, which some people would accuse us

1 of being as a Board.

2 BOARD MEMBER SCHENK: Unbalanced.

3 CHAIRPERSON RICHARD: Two last points on this.

4 The first is just to pick up on what Mr. Morales  
5 said. One of my concerns had been when we deal with  
6 design-build, we know that design-build can bring us  
7 tremendous benefits in terms of getting a project  
8 delivered on time and within budget because it shifts  
9 risks to the developer, to the contractor to complete the  
10 design. And then build to that design, which minimizes  
11 their opportunity to come in with change orders if they're  
12 the ones making the design.

13 At the same time, we want to make sure that in  
14 shifting that responsibility for design completion to them  
15 that we're still meeting standards that the public wants  
16 and expects in terms of the product quality that we're  
17 going to be given here.

18 So that was the nature of some of my questions  
19 for staff, and I was satisfied that there is very  
20 extensive design standards. So that we're not simply just  
21 tossing this to the respective contractor. They have to  
22 build something that meets design criteria. How they do  
23 that and what innovations they bring to meeting those  
24 design standards is up to them and that gives them the  
25 opportunity for competitive advance.

1           But we don't want a sub-standard product at the  
2 end of the day. That's the design standard piece is part  
3 of this.

4           Finally, my last comment on this is that again  
5 several of the Board members have talked about the desire  
6 to have robust competition here and to encourage members  
7 of the bidding community to rigorously compete for this  
8 very long but also very significant project.

9           One of the questions that I asked staff on  
10 several occasions as we went through the litany of  
11 contract provisions was are these customary and standard  
12 in the construction industry in the bidding industry. And  
13 of course, with a project like this, there will be areas  
14 where we have to do things that are new that have not been  
15 seen before.

16           But again, I took some comfort from the fact that  
17 in virtually every case, the answers with that these were  
18 standard types of provisions that they were customary,  
19 they were within the range of expectations even if there  
20 was some slight variations they were within the range of  
21 expectations of the bidding community.

22           So I think with the stipend, with the fact that  
23 we're using customary provisions with the fact that as  
24 Vice Chair Hartnett pointed out, we've been able to look  
25 at experience with the first construction package, I just

1 want to say that I certainly think that the staff has done  
2 a very professional job in putting this together. And  
3 it's a very large package. And we're hopeful that it  
4 leads to the kind of robust competition we've seen in the  
5 past.

6 Other comments, questions, concerns from members  
7 of the Board?

8 This is an action item, right? I'll entertain a  
9 motion to move forward with this.

10 BOARD MEMBER SCHENK: So moved.

11 CHAIRPERSON RICHARD: It was moved I saw first by  
12 Ms. Schenk and seconded by Vice Chair Richards.

13 Secretary, please call the roll.

14 BOARD CLERK NEIBEL: Vice Chair Richards?

15 VICE CHAIRPERSON RICHARDS: Yes.

16 BOARD CLERK NEIBEL: Vice Chair Hartnett?

17 VICE CHAIRPERSON HARTNETT: Yes.

18 BOARD CLERK NEIBEL: Mr. Umberg?

19 BOARD MEMBER UMBERG: Yes.

20 BOARD CLERK NEIBEL: Ms. Schenk?

21 BOARD MEMBER SCHENK: Yes.

22 BOARD CLERK NEIBEL: Ms. Perez-Estolano?

23 BOARD MEMBER PEREZ-ESTOLANO: Yes.

24 BOARD CLERK NEIBEL: Mr. Frank?

25 BOARD MEMBER FRANK: Yes.

1 BOARD CLERK NEIBEL: Chairman Richard?

2 CHAIRPERSON RICHARD: Yes. Thank you.

3 And thank you to all the staff members that  
4 worked on this. I know this was an enormous effort. We  
5 appreciate that.

6 Next item is an update on the EIR/EIS process for  
7 the Fresno to Bakersfield alignment.

8 Diana Gomez -- and I think -- I don't know if  
9 Mark --

10 MS. GOMEZ: He's going to join me. Team effort.

11 CHAIRPERSON RICHARD: Not that anybody needs to  
12 assist you, Ms. Gomez.

13 MS. GOMEZ: It's always helpful. Good morning,  
14 Chairman and Board members.

15 This item is an informational item to update the  
16 Board on staff actions regarding the fine EIR/EIS since we  
17 last presented in November. And then also to detail the  
18 next steps in the process.

19 As you recall, last November in 2013 meeting, the  
20 Board concurred with the staff recommended preferred  
21 alternative to be included in the final environmental  
22 document for Fresno to Bakersfield.

23 Since November, we have continued to engage with  
24 stakeholders including elected officials, State agencies,  
25 local cities, local communities, many irrigation

1 districts, impacted property owners to discuss the  
2 document, the footprint, the right-of-way process, and  
3 also to discuss minimization and mitigation impacts.

4           Since November, major milestones that were  
5 completed were the concurrence from the regulatory  
6 agencies on the staff preferred alternatives. Mark  
7 McLoughlin, our Director of Environmental Services, will  
8 discuss the technical reports that been completed and then  
9 the next steps.

10           CHAIRPERSON RICHARD: Mr. McLoughlin, good  
11 morning.

12           MR. MC LOUGHLIN: Thank you. Thank you, Diana  
13 and Chairman and Board members.

14           I'll give a very brief focus on the next steps  
15 for the Fresno-Bakersfield section and environmental.  
16 We're very focused on environmental approvals and  
17 permitting to allow on the heels of the CP 2-3 to allow  
18 procurement and construction to proceed. That's our main  
19 goal is to get those approvals through the permitting  
20 agencies and the environmental documents to make sure that  
21 we can meet our schedules and commence construction.

22           Within the next two months, I'll drill down a  
23 little bit in some detail again following up on Diane's  
24 correction. In November, we submitted our what we call  
25 Checkpoint C document to the US Corps. of Engineers and

1 the US Environmental Protection Agency for our preferred  
2 alternative. We submitted that right after the Board  
3 decision to submit that and right before the holiday. We  
4 had concurrence from the Corps. of Engineers and the EPA  
5 that the preferred alternative we submitted was the LEDPA.  
6 And that alternative was basically the BNSF including --

7 CHAIRPERSON RICHARD: You should define that  
8 term, Mark.

9 MR. MC LOUGHLIN: LEDPA is the least  
10 environmentally damaging practicable alternative.

11 CHAIRPERSON RICHARD: Right. And we didn't make  
12 up that term. That's a term that exists in statute.

13 MR. MC LOUGHLIN: That's correct. But it's one  
14 of our many acronyms. That's correct.

15 And that -- just to go backwards on that, that is  
16 a combination of BNSF, the Corcoran Bypass, Alansworth  
17 Bypass, and the Bakersfield Hybrid Alternative, those  
18 combinations of that preferred alternative. And in that  
19 preferred alternative goes from Fresno to seven standard  
20 road. So that's where we will be permitting, which  
21 include CP 2-3 and then portions of the future four.

22 So with that concurrence, we also submitted our  
23 permit application for the 404 to the Corps. of Engineers  
24 in January. And we've yet to receive any information back  
25 on that. So we're following that very closely to meet the

1 procurement strategy as long as California Fish and  
2 Wildlife, State Water Board, US Fish and Wildlife. So  
3 we're now in the process of completing the final EIR/EIS  
4 and we expect to release this document for public review  
5 this April. And we're also --

6 BOARD MEMBER PEREZ-ESTOLANO: Can I ask a quick  
7 question? What's form 404.

8 MR. MC LOUGHLIN: It's a Clean Water Act permit  
9 from the US Army Corps. of Engineers. Basically comes  
10 from Clean Water Act, the US Army Corps. of Engineers has  
11 delegated authority over the Clean Water Act and the State  
12 Water Board has the state delegation.

13 CHAIRPERSON RICHARD: Section 404 of the Clean  
14 Water Act, it's really the major permit for any imposition  
15 of waterways in the United States.

16 MR. MC LOUGHLIN: Really to fill a jurisdictional  
17 feature by the Corps., a wetland or river or vernal pools,  
18 for instance, which we see a lot in the Central Valley.

19 BOARD MEMBER PEREZ-ESTOLANO: Thank you.

20 MR. MC LOUGHLIN: So now again we're in the final  
21 throes to complete the EIS, EIS of importance not only for  
22 its important CP 1, which 1A, 1B, CP 1C, part of CP 1.  
23 We're racing to complete that.

24 And on CP 1 our resource agencies are eminent.  
25 We expect those before the end of this month, so we're

1 moving forward with that progress for CP 1 and the  
2 existing construction contract.

3           So as we move forward on completing the document,  
4 we would like to -- we're looking at requesting a two-day  
5 Board meeting at the end of April for the project similar  
6 to what we did for Fresno. First day would be public  
7 comment. The second day would be deliberation by you the  
8 Board on how to proceed.

9           Couple time lines in meeting our schedule. Once  
10 we provide the final EIR, EIS to the FRA, there will be a  
11 public review for 30 days. That's for targeting the first  
12 week or so of April for that. The FRA ROD, or record of  
13 decision, is post your deliberations in April, which is  
14 roughly the middle of May we are targeting right now.

15           And then again, on the -- if you may have  
16 questions on the STB decision that's posted, FRA record,  
17 they have up to 60 days to issue their report of decision  
18 regarding construction. We've been working with FRA and  
19 STB to close that gap to work together with them to have  
20 commensurate RODS within a short period of time.

21           So with that, that's a very brief update for us.

22           CHAIRPERSON RICHARD: Just a clarification for  
23 some members, Mr. McLoughlin mentioned that the adoption  
24 of the Record of Decision notice of decision under the  
25 EIS, EIR process is important also for construction

1 package one. And that's because in Construction Package  
2 1, it really spans a 29-mile length, but only 25 miles of  
3 that is in the portion of the Merced to Fresno EIR/EIS  
4 that was previously clear. So a contractor will not be  
5 given the authority to move -- cannot be legally given the  
6 authority to move on the last five miles of that unless  
7 and until the next EIR/EIS which laps over that five mile  
8 portion gets adopted by this Board.

9 So I think I've stated that accurately, Mr.  
10 Morales.

11 Mr. Frank, did you have a question?

12 BOARD MEMBER FRANK: Really more of a comment.  
13 You mentioned that public hearing in Fresno has been  
14 scheduled to take comment on the EIR at the end of April.  
15 If possible, if we haven't tied down the particular time  
16 and schedule, I would recommend that we try and schedule  
17 that hearing to commence in the early afternoon to allow  
18 Board members and staff to travel to Fresno. But more  
19 importantly to extend the hearing into the evening hours  
20 to allow those interested members of the public who are  
21 working or other obligations during the day to participate  
22 and to maximize the opportunities for public comment and  
23 participation.

24 MR. MC LOUGHLIN: Agreed.

25 CHAIRPERSON RICHARD: I think that's a good

1 suggestion. I know Ms. Andranigain in her public comments  
2 asked where those meetings would be held, and it is going  
3 to be held in Fresno, which should be convenient to people  
4 along the alignment there.

5 Other questions? Okay. Thank you, Mr.  
6 McLoughlin and Ms. Gomez for that update.

7 Last item we have is for Mr. Morales, update on  
8 the Draft 2014 Business Plan.

9 CHIEF EXECUTIVE OFFICER MORALES: Very clearly,  
10 Mr. Chairman, I just wanted to update the Board but also  
11 remind the public that we are still in the public comment  
12 period on the draft plan.

13 As of this morning, we had received 110 comments.  
14 With Mr. Dayton's, we're up to 111 now. We are in the  
15 process of reviewing those, reminding people again they  
16 have several different ways they can submit comments,  
17 through the website, which is the way the majority of  
18 comments have been submitted. Also through the mail and  
19 phone and by speaking here at the Board meeting. So we  
20 are moving forward with that again receiving a good number  
21 of comments. Some very specific, some suitable for  
22 discussion of public some not. But we're moving ahead.

23 CHAIRPERSON RICHARD: Okay. That's good. Thank  
24 you. We'll just have two other items before we close.

25 BOARD MEMBER PEREZ-ESTOLANO: I just have a quick

1 question.

2           Jeff, are we going to receive copies of those  
3 comments? At the end of that 60 days period, we'll  
4 receive them all?

5           CHIEF EXECUTIVE OFFICER MORALES: What we will  
6 have available to the Board and the public is a full  
7 cataloguing of the comments sorted. What we do is, among  
8 other things, try to group them together. So if we have  
9 15 comments all in the same area, we note that. And so  
10 that you will also get a sense of where the preponderance  
11 of issues were or comments or questions.

12           BOARD MEMBER PEREZ-ESTOLANO: I just want to make  
13 sure everybody knew the comments would be made public as  
14 well as to the Board.

15           CHAIRPERSON RICHARD: Thank you. That's an  
16 important clarification. Thank you for that.

17           Ms. Schenk.

18           BOARD MEMBER SCHENK: But I just want to  
19 underscore the comment that was made here earlier and that  
20 is sort of a fundamental approach to it to make sure that  
21 it is understandable that it is reader friendly to the  
22 public especially and that we as much as possible not use  
23 acronyms to define terms and have it sorted and organized  
24 in a way that there is as much smooth flow to the reader  
25 as possible.

1           CHAIRPERSON RICHARD: Okay. Before we go, you  
2 had a new member of your staff that perhaps you could just  
3 indicate.

4           COUNSEL FELLEENZ: Thank you, Mr. Chairman and  
5 Board members. We do have a new Assistant Chief Counsel.  
6 Jim Andrew just recently joined us today is his first day.  
7 He was at the Attorney General's office for a number of  
8 years, as well as private practice. And pleased to have  
9 Jim on board as Assistant Chief Counsel, especially me.  
10 I'm very pleased.

11           BOARD MEMBER SCHENK: That's your birthday  
12 present.

13           CHAIRPERSON RICHARD: I wanted to make a couple  
14 of comments on this. First of all, I'm not a veteran. I  
15 did not serve in uniform. But many of the members of this  
16 Board did. And so there's generally been a running battle  
17 as to which service has been most prominent. And we have  
18 Mr. Rossi and Mr. Henning who were this the Marine Corps.  
19 We have Mr. Hartnett, who was in the United States Navy.  
20 Mr. Umberg is still on active reserve in the United States  
21 Army. And Mr. Richard was a veteran of the Army, although  
22 was the helicopter wing, so almost airborne.

23           But Mr. Andrew, I understand, was a surface  
24 warfare officer in the United States Navy. But that  
25 background will probably be well suited for us as we go

1 forward.

2 But I just want to say that to the chagrin of  
3 several of our Board members, it looks like we have  
4 another Navy guy here in the organization. Just thought I  
5 would point that out.

6 BOARD MEMBER SCHENK: Coming from San Diego, I  
7 like that

8 CHAIRPERSON RICHARD: Mr. Frank.

9 BOARD MEMBER FRANK: I can't take any credit for  
10 recruiting from the Attorney General's Office. He was  
11 hired after I left in a relatively short period of time.  
12 He really developed a stellar reputation as one of the  
13 strongest members of the land law section in which he  
14 worked with distinction for a number of years.

15 While I'm sure we at the Authority are delighted  
16 to get him as the Assistant Chief Counsel, it is a  
17 significant loss to the Attorney General's Office. And I  
18 guess is that Kamala Harris and her management team are in  
19 mourning today. Welcome aboard.

20 BOARD MEMBER PEREZ-ESTOLANO: Jim and I have come  
21 across each other's path in previous lives. I just can't  
22 be more thrilled with the experience you have but also the  
23 approach that you take, the work that you do. So when we  
24 heard about this, we were all doing a high five saying we  
25 scored. So thanks so much for joining the team.

1           CHAIRPERSON RICHARD: Even though it's Mr.  
2 Fellenz' birthday today, that's his present us. Anyway,  
3 welcome, Jim. Thank you.

4           So just before we close, I'm just going to  
5 exercise Chair's prerogative to make a comment or two.  
6 This is, as everybody knows, a controversial and  
7 challenging project. And you know like any other major  
8 infrastructure project, there are moments of triumphs and  
9 moments of setback.

10           But at today's Board meeting, what you saw is an  
11 organization that's moving forward with the next  
12 construction package to complete the development of the  
13 spine of high speed rail in the Central Valley. You see  
14 that we are continuing to attract a top talent for our own  
15 staff. The organization under Mr. Morales' leadership  
16 becomes ever stronger and gives us confidence in the  
17 ability of this organization to deliver these projects.  
18 And contrary to what people might see or read, the high  
19 speed rail program is moving forward in this state.

20           We do have these challenges, and there were some  
21 public comments this morning about whether or not we're  
22 complying with the law and the voters and so forth. I can  
23 tell you sitting here both as Chair but also working with  
24 these men and women as colleagues that everything that we  
25 have done since I've been on this body and everything that

1 we do is to further the purposes of the Bond Act and the  
2 law and the will of the voters to build a complete modern  
3 high speed rail system.

4           And in fact, I challenge anybody to point to a  
5 single decision that we've made that is contrary to the  
6 purposes of Proposition 1A or what we're trying to build.  
7 What we've determined is that we need to do this in phases  
8 as a practical matter. That approach certainly was  
9 received the affirmation of the federal auditors at the  
10 Government Accountability Office who came in and looked at  
11 that and said that was the best way to deal with the risks  
12 and uncertainty of funding.

13           I have to also say that I take note of the fact  
14 that sometimes people who criticize this project and say  
15 somehow we're not following the law would propose  
16 solutions. I'm thinking of counsel for one of our  
17 adversaries who would say, well, build it up the I-5 or do  
18 other things that in fact on their face violate the law  
19 and the intent of the law. So I feel very comfortable  
20 that while this Board I think is open to any type of  
21 public criticism and suggestions and so forth, what we're  
22 doing is we're moving forward in a deliberative process  
23 and a deliberative way to actually build this project.

24           And finally, there was one comment made about the  
25 desire of the public this process be transparent. And

1 that's certainly an appropriate comment. But we're  
2 talking about building a project that's going to cause  
3 billions of dollars of either taxpayer money, bond holder  
4 money, or private sector money that we would be the  
5 stewards for. And of course that process needs to be open  
6 and transparent. I think if you stand back and look at  
7 what's occurred over the last several years, our process  
8 of developing a business plan, developing a funding plan,  
9 these were all the subject of extensive open, public  
10 hearings, public discussions and debate.

11 I think that there cannot really be any  
12 reasonable person who is not aware of the decisions that  
13 we made or the issues that we presented to the California  
14 Legislature which had its own extensive and detailed look  
15 at this project and the direction we were taking and many  
16 of the questions whether they have been before the court  
17 or public were, in fact, addressed by the Legislature in  
18 their processes. So transparency is absolutely essential.

19 Last month, we made the decision based on the  
20 request from the Assembly Transportation Committee Chair  
21 that at our Financial and Auditing Committee meeting be  
22 open for public observations. We've done that. Last  
23 month, we had the presentation by our staff of the system  
24 of reports and metrics this organization is going to use  
25 as we go forward.

1 I challenge any other public agency to show that  
2 they have a more extensive system of that type of  
3 reporting information. And if they do, we'll match it.  
4 So I just want to sit here and say that it's my sense and  
5 I believe that I speak for my colleagues on this, that  
6 what we are doing is very much faithful to what the public  
7 asked us to do and that frankly we live in a time and  
8 place where there is going to be opposition. And I  
9 understand that opposition. And it's rational. If this  
10 project were coming through my backyard, I might have  
11 objections to it as well.

12 But I think that what we're trying to do here is  
13 something that is for the greater good. And I know there  
14 is a lot of confidence on the part of this Board we're  
15 proceeding in a fashion that's consistent with the public  
16 interest.

17 So I apologize for taking the moment. But I do  
18 think that a lot of these comments have started to take  
19 some hold in the public and I just think it's incumbent on  
20 us to stand up and say, no, what we're doing is exactly  
21 what the public asked us to do what they enacted  
22 Proposition 1A and under the leadership of the Governor  
23 who I think has a lot of vision and a lot of guts we are  
24 going to deliver this project for the people of  
25 California. So thank you for indulging me on that.

1           With that, we'll stand adjourned. Thank you.  
2           (Whereupon the High Speed Rail Authority Board  
3           meeting recessed at 11:30 AM)

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CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of March, 2014.

\_\_\_\_\_  
TIFFANY C. KRAFT, CSR, RPR  
Certified Shorthand Reporter  
License No. 12277