

# Judge will decide if high-speed rail bonds are valid

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SACRAMENTO - California voters approved Proposition 1A, a \$9.9 billion bond measure for high-speed rail, almost five years ago. On Friday, a cadre of attorneys argued over whether or not the state can now sell those bonds.

Opponents of high-speed rail, including Kings County and two of its residents and the Howard Jarvis Taxpayers Association, said that because the statewide bullet-train system now planned by the California High-Speed Rail Authority is not what voters were promised in 2008, the issuance of the bonds should not be validated.

They also alleged that a board of officials from the state treasurer's office, the Department of Finance and others failed to exercise appropriate judgment when they authorized the issuance of the bonds in March, instead serving only as a "rubber stamp" of the rail authority's request for funds.

An attorney for the rail agency countered that the issuance of the bonds is legally distinct from the use of the funds, which are subject to other legal challenges. Instead, she argued, the rail authority and the High-Speed Passenger Train Finance Committee met all of the requirements under the law to authorize the bonds.

Sacramento County Superior Court Judge Michael Kenny did not rule Friday, instead taking the attorneys' arguments under submission. He is expected to issue a decision within weeks.

The latest hearing served as the trial for the rail authority's bond-validation lawsuit - a case in which the agency is declaring that whoever wants to challenge the legality of the bonds do so now or forever hold their peace. The authority wants Kenny to declare that the bonds legally comply with Prop. 1A, the state Constitution, and all other state laws, and effectively bar any future challenges to the issuance of the bonds.

Deputy Attorney General Stephanie Zook said a declaration of the bonds' validity is important for the rail agency to be able to sell bonds next spring to finance construction that the agency hopes will get underway in the Fresno-Madera area in early 2014.

"There have been appropriations by the Legislature ... for administrative expenses and planning out of these proceeds more than a year ago, but there are no bonds to sell," Zook said. "So

every day continues to be more critical in terms of selling bonds, in getting a determination that the bonds are valid."

The Obama administration has provided more than \$3 billion in federal stimulus and transportation funds for California's high-speed rail project, on the condition that it be matched with bond money from Prop. 1A. "The federal government is currently spending money, and they need assurances that the bonds are valid," Zook added.

But Bobbie Ross, an attorney for the Howard Jarvis Taxpayers Association, argued that the bonds should not be validated because they won't be used for the purpose approved by voters as required by the state Constitution.

Prop. 1A promised voters a high-speed rail system from San Francisco to Los Angeles, "but that's not what they're getting," she said of the current high-speed rail business plan calling for of a blended system in which bullet trains would share tracks with commuter trains on the San Francisco Peninsula. Zook countered that the only issue that matters in the bond validation is whether the bond committee - a five-member group comprised of the state treasurer, finance director, controller, transportation secretary and the rail authority chairman - acted legally to authorize the bonds. She said other issues are for cases "down the road."

One such case is a lawsuit by Kings County, Hanford farmer John Tos and homeowner Aaron Fukuda against the rail authority alleging that the agency's plans violate Prop. 1A. That case is also being heard by Kenny, who gave them a partial victory last month when the judge agreed that the rail authority's 2011 financing plan fell short of compliance with two Prop. 1A requirements:

<SC120,116>That the rail authority identify all sources of money needed to complete its "initial operating segment" from Merced to the San Fernando Valley.

<SC120,116>That all of the environmental clearances required for the rail route between Merced and the San Fernando Valley be completed before any construction could begin.

Kenny stopped short of ordering work halted on the rail project, instead asking attorneys for both sides to submit arguments on potential legal remedies. A hearing on those issues will be in November.

On Friday, Kenny's questions of attorneys suggested that he may be inclined to consider the bond validation case along rather narrow lines and distinguish between the validity of the bonds and the eventual use of the money.

Stuart Flashman, who represents Tos, Fukuda and Kings County in their lawsuit, blasted the bond committee for its "slovenly" process to determine whether issuing bonds was "necessary or desirable" - a decision that he said should have been made based on some kind of evidence.

Zook said that despite the misgivings of Flashman, Ross and other opponents' attorneys, both the authority and the finance committee met their obligations under the law for the bonds to be validated.

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