

Judge weighs whether to block Calif. high-speed rail spending

BY TIM SHEEHAN

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SACRAMENTO — Attorneys for Kings County say that the California High-Speed Rail Authority must be stopped from spending or committing any money for construction of its controversial bullet-train system in the central San Joaquin Valley -- at least until it brings its funding plan into compliance with state law.

But the rail agency's lawyers say the authority is complying with its legal obligations -- despite a judge's August ruling to the contrary -- and that a court need not step in to rescind construction contracts or bring work to a halt.

After hearing arguments Friday, it's up to Sacramento County Superior Court Judge Michael Kenny to decide what to do.

Kenny is presiding over a lawsuit by Hanford farmer John Tos, homeowner Aaron Fukuda and the Kings County Board of Supervisors that accuses the rail authority of violating Proposition 1A, a \$9.9 billion bond measure approved by California voters in 2008. Kenny did not issue a ruling Friday, nor did his questions to attorneys offer a clear indication of which way he might lean when he does make a decision sometime within the next 90 days.

Earlier this year, Kenny ruled that a 2011 funding plan approved by the rail agency failed to fully meet Prop. 1A requirements in two key ways:

- The plan did not identify where the agency reasonably expected to receive more than \$30 billion needed to build its "initial operating segment" from Merced to the San Fernando Valley.
- The agency could not certify that it had completed all of the environmental clearances needed for the entire Merced-San Fernando Valley segment before beginning any construction.

Those shortcomings were at the heart of the arguments lodged Friday by Stuart Flashman, an Oakland attorney representing the Kings County opponents, and Michele Inan, a deputy with the California Attorney General's Office who spoke on behalf of the rail agency.

"Right now the authority is walking a fine line between moving this project along and complying with the bond act, and it is complying with the bond act requirements," Inan told the judge.

Quoting Will Rogers

Flashman recalled a saying attributed to Will Rogers: "When you find yourself in a hole, the first thing to do is stop digging."

Because of Kenny's August ruling, "we think the authority is in a hole, and we think the appropriate thing for them to do is to stop digging, but they don't seem inclined to do that," Flashman said of the agency's efforts to forge ahead with its work on the project. "That's why we're here today. We feel the court needs to step in and say, 'Stop digging.' "

The federal government has provided about \$3.3 billion in stimulus and transportation money for construction in the San Joaquin Valley. The state must eventually match that federal contribution with about \$2.7 billion from Prop. 1A.

By approving contracts for about \$1.2 billion for work including construction in the Madera-Fresno area, Flashman said the authority is violating Prop. 1A by committing bond funds without a valid funding plan.

In addition, Flashman said pre-construction work, including land acquisition and utility relocation, are also commitments of bond money. "We think this is all improper," he said.

Dipping into fed pot

Inan countered that the state is spending only federal money, thus avoiding a violation of Prop. 1A by spending bond funds on construction without a funding plan.

Spending federal money, she added, "does not commit bond funds. ... And there is no need to match anytime soon."

Whatever Kenny decides in this portion of the case, the lawsuit won't be completely settled.

There remains a second portion of the case to be tried, over allegations that the authority's plan for a "blended system" of high-speed trains on commuter tracks in the Bay Area is significantly different from what voters approved. The Kings County plaintiffs contend that such a system cannot meet performance requirements of Prop. 1A, including providing a nonstop trip between Los Angeles and San Francisco in 2 hours 40 minutes.

Plaintiff John Tos said after the hearing that he believes the rail agency, by continuing to work toward breaking ground later this year or in early 2014 in the Fresno area, is "totally ignoring the mandates that (voters) set" in Prop. 1A as well as Kenny's August ruling. "How long they can keep doing this, I have no idea."

"It's clear as mud to me that this is all lawyer talk now," he added. "I would hope we would kill the whole plan now because we have other issues that we need to be spending our time and our effort and money on, such as water."

The authority's spokeswoman, Lisa Marie Alley, said the agency is following the law.

"At this time we do believe we're in compliance with the law and everything that we're expected to submit" in reports to the Legislature, Alley said. "We continue to feel that we can move forward with this project ... unless the judge says otherwise."

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