

High-speed rail agency's fight against court setbacks 'arrogant,' Kings County says

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An attorney for Kings County not only says a state appeals court should reject what he calls the California High-Speed Rail Authority's "arrogant request" to overturn lower court rulings against the rail agency -- he wants justices to go a step further by invalidating the Legislature's 2012 vote to spend nearly \$6 billion on bullet-train construction in the San Joaquin Valley.

Stuart Flashman, who represents Hanford farmer John Tos, homeowner Aaron Fukuda and the county's Board of Supervisors, made his points [in court documents filed Monday](#) with the 3rd District Court of Appeal in Sacramento. The filing comes in response to [a petition](#) by the rail agency, Gov. Jerry Brown and other state officials appealing a pair of decisions that could derail plans to begin building the statewide train project this summer with a 29-mile stretch from Madera through Fresno.

Sacramento County Superior Court Judge Michael Kenny ruled in November against the rail agency in two separate but related cases. In one, Kenny denied a request by the authority to validate the sale of bonds from Proposition 1A, a \$9.9 billion high-speed rail bond measure approved by California voters in 2008. Kenny determined that the state's High-Speed Passenger Train Finance Committee -- a panel comprising the California state treasurer, finance director, controller, transportation secretary and the rail authority chairman -- authorized the issuance of bonds without any substantial evidence that it was "necessary or desirable" to issue the bonds now.

In the other case, filed in 2011 by Tos, Fukuda and Kings County, Kenny declared that a financing plan approved by the authority violated Proposition 1A in two ways: by failing to detail all of the sources for the estimated \$31 billion needed to build its proposed "initial operating segment" between Merced and the San Fernando Valley, and by failing to certify completion of all environmental work for that operating segment. Kenny subsequently ordered the authority to rescind its approval of the plan.

But the judge refused to invalidate the Legislature's July 2012 approval of Senate Bill 1029, which appropriated \$2.6 billion in Prop. 1A bond money and \$3.24 billion in federal grant funds for construction in the Valley.

The rail authority and the Brown administration initially sought to appeal both cases to the California Supreme Court, but justices deflected the petition to the 3rd Court of Appeal. The appeals court agreed to hear the case and stay Kenny's order rescinding the finance plan approval for the time being.

In its appeal, the state asserts that Kenny erred in his rulings in the bond validation and in the Kings County case.

In the bond case, the state Attorney General's office says the Finance Committee's findings are not subject to legal challenge and that state bond law does not require the panel to support with evidence its finding that issuing the high-speed rail bonds was necessary or desirable. "The authority's request alone (for issuance of the bonds) was alone sufficient evidence to support that determination," the appeal states.

In Kings County's Prop. 1A lawsuit, the state asserted that the preliminary 2011 funding plan was "intended solely for the Legislature's consideration in deciding whether to appropriate bond proceeds to build the project." Regardless of the bond measure's language requiring the agency to identify all of its funding sources in the financing plan and be able to certify completion of its environmental clearances, the appeal petition states that "the courts must fairly interpret laws in a manner that permits governments to accomplish their objectives, rather than adopting cramped constructions that frustrate legislative and voter intent.

Flashman characterized the rail authority's appeal as "an arrogant request ... to disregard the promises the Legislature made to California voters when placing Proposition 1A on the ballot." Doing so, he added, would allow the authority and the governor "to move forward in direct contravention of the language and intent of the measure, and of the statutes defining the process for issuing general obligation bonds."

No date has been set for the two sides to square off in oral arguments before the appeals court. But the rail authority expects to add another case to the justices' plate soon, as it asks for a review of Kenny's latest ruling in another portion of the Kings County case.

In addition to challenging the rail authority's financing plan, the Kings County lawsuit alleges that the agency's current construction and operational plan for high-speed trains violates Prop. 1A in several key aspects, including that its plan for trains to share tracks with commuter trains on the San Francisco Peninsula and in Southern California is not what voters approved in 2008.

The rail authority asked Kenny to dismiss that portion of the lawsuit, but Kenny ruled on March 4 that it could move forward to trial. A petition by the authority appealing that ruling could be filed with the Third District court this week.

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