

High-speed rail foes ask California Supreme Court for a hearing | High-Speed Rail

By Tim Sheehan



John Tos, center, a Hanford farmer and a plaintiff in a lawsuit challenging the California High-Speed Rail Authority's funding plan, talks with reporters after a recent Sacramento County Superior Court hearing. RICH PEDRONCELLI — Associated Press

High-speed rail opponents in Kings County are taking their fight to the California Supreme Court, filing a petition Tuesday asking justices to reverse two appeals court rulings.

Attorneys for Kings County farmer John Tos, Hanford homeowner Aaron Fukuda and the Kings County Board of Supervisors stood on the steps of the Supreme Court building in San Francisco to announce the petition. The announcement was in anticipation that the 3rd District Court of Appeal would deny their requests for a rehearing.

Indeed, the 3rd District court issued its rehearing denials later on Tuesday.

"Given their attitude in oral arguments and in their decision, it was clear (that the appellate justices) were not going to change their mind," said Stu Flashman, an Oakland attorney for the Kings County interests.

The appeal to the Supreme Court centers on provisions of Proposition 1A, a \$9.9 billion high-speed rail bond measure approved by voters in 2008. Unless the Supreme Court first agrees to hear the case and then rules in favor of rail foes, the California High-Speed Rail Authority and the state would be clear to issue bonds and forge ahead with its initial construction in the central San Joaquin Valley.

In the Tos/Fukuda/Kings County case, Sacramento County Superior Court Judge Michael Kenny ruled last fall that the state's preliminary funding plan for the rail system violated Prop. 1A because it failed to identify realistic sources for all of the money needed to build its "initial operating segment" from Merced to Los Angeles. The judge also ruled that the plan required the authority to have certified environmental clearances for all portions of the Merced-Los Angeles route before it could begin construction anywhere along the line.

In a separate case, Kenny denied a request by the state to issue a blanket validation for the issuance of the Prop. 1A high-speed rail bonds. Kenny concluded that a state financing panel failed to consider evidence on the record before determining last spring that it was "necessary and desirable" to issue bonds to finance construction of the rail system.

A three-judge panel of the 3rd District court in Sacramento overturned both of Kenny's rulings in an opinion issued July 31.

In addition to the Supreme Court petition filed Tuesday by the Kings County interests, attorneys for the Howard Jarvis Taxpayers Association and Bakersfield's First Free Will Baptist Church anticipate filing their own petition to the Supreme Court related to the bond validation.

"What is at stake in this lawsuit is the public's trust in measures placed on the ballot by public agencies for approval of the voters," said Flashman. He said Prop. 1A's specific conditions for financing plans represent promises made to voters and "clearly intended to protect the state from the financial risk this huge project could involve."

The rulings by the 3rd District justices, Flashman said, have the effect of "allowing the high-speed rail authority and the bond finance committee created by Prop. 1A to violate specific provisions of the bond measure with impunity."

The California High-Speed Rail Authority sees things a little differently.

"We are pleased with the recent court rulings by the 3rd District Court of Appeal that support our ability to build the nation's first high-speed rail system," said Lisa Marie Alley, a spokeswoman for the rail agency. "The opponents still hope to thwart the will of the people, yet we remain committed to this program and the environmental and economic benefits it brings to California."

Once the Jarvis taxpayers association files its petition, the Supreme Court has 60 to 90 days to decide whether it will accept the case for review. If it does, justices would then establish a schedule for attorneys to file briefs and set a hearing date.

Also on Tuesday, San Francisco Mayor Ed Lee and other Bay Area transportation officials declared their support for high-speed rail and called for an end to the string of legal challenges.

"These lawsuits must end," said Maria Ayerdi-Kaplan, executive director of the Transbay Joint Powers Authority, which is developing a terminal in San Francisco for high-speed rail and other transportation systems. "They are only draining taxpayer resources away from high-speed rail and delaying the San Francisco Transbay Transit Center-to-Los Angeles rail connection the voters sought when they approved Prop. 1A."

As the legal wheels continue to turn, demolition of some buildings in the path of the rail line and road overpasses has begun on the agency's first construction section, a 29-mile stretch from Madera to downtown Fresno. That segment and about 100 miles from Fresno to Bakersfield are proposed to be the backbone of a \$68 billion, 520-mile system linking San Francisco and Los Angeles with electric trains carrying passengers at speeds up to 220 miles per hour.

The authority estimates that it will cost about \$6 billion to build the Madera-Bakersfield stretches. To date, the rail authority has certified its environmental approvals only for the two Valley segments, but at least six lawsuits have been filed challenging the agency's approval in May of the Fresno-Bakersfield section. No environmental certification has been approved for sections from Bakersfield to Los Angeles, or from San Francisco and the Bay Area to the Merced-Madera area.

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