

Trial date set in Prop. 1A lawsuit over high-speed train plans

Tim Sheehan, Fresno Bee, 8-4-15

A trial date has finally been set in Kings County's long-running lawsuit challenging whether California's high-speed train project complies with the 2008 bond act for the system.

Sacramento County Superior Court Judge Michael Kenny will hear arguments Feb. 11 in the case filed in late 2011 by John Tos, Aaron Fukuda and the Kings County Board of Supervisors against the California High-Speed Rail Authority and a raft of state government officials, including rail authority CEO Jeff Morales, Gov. Jerry Brown, and the state's treasurer, finance director, controller and transportation secretary.

Tos owns Tos Farms Inc. which has farmland along the rail route through Kings County, while Fukuda until last year owned a home in a rural neighborhood just east of Hanford that will be displaced by the train tracks. Fukuda is also one of the founders of a local rail-opposition organization, Citizens for California High-Speed Rail Accountability. Tos and Fukuda were joined by Kings County in filing a two-pronged lawsuit against the state over the rail system.

Tos, Fukuda and Kings County lost on the first prong of their case which alleged that the rail authority's 2011 draft business and funding plan violated requirements of Proposition 1A, the \$9.95 billion high-speed rail bond act that was approved by California voters in 2008. Kenny ruled in the county's favor in November 2013, ordering the rail authority to re-do the plan. But his decision was overturned by the state's 3rd District Court of Appeal, and the state Supreme Court declined Kings County's petition to review the case.

Now, attention focuses on the second prong of the case for Kenny to decide: the suit's allegations that the state's plan for a "blended" system — in which high-speed trains will share electrified tracks with the Bay Area's Caltrain commuter rail line between San Francisco and San Jose — does not live up to the system promised in Prop. 1A and that the system cannot operationally comply with key Prop. 1A requirements, including making a nonstop trip between San Francisco and Los Angeles in 2 hours 40 minutes or be able to operate without a subsidy of public funds.

The trial will likely be a battle of expert opinions, but those opinions will be on paper in declarations and arguments submitted to the court rather than in-person testimony in the courtroom. A year ago, Kenny granted a motion by the state to limit evidence in the trial to administrative records submitted to the court for a hearing in May 2013 and for the authority's decision to approve a 2014 business plan. On Friday, the judge heard arguments for, but did not rule on, a motion by attorneys for Tos, Fukuda and Kings County to add more documents to the administrative records that will be considered at trial in February.

Attorneys for Tos, Fukuda and Kings County are due to file an opening brief by Nov. 1, and the state must file its opposition brief by Jan. 15. The plaintiffs' final reply brief will be due Feb. 5.

The Tos/Fukuda/Kings County case is only one of a handful of lawsuits involving the rail authority:

- Kings County, Kern County, the First Free Will Baptist Church of Bakersfield, Dignity Health in Bakersfield and the city of Shafter are all suing the agency in separate, but consolidated, cases — also in Kenny's Sacramento court — over its environmental certification and route approval last summer for the Fresno-Bakersfield section of the rail line.

- The agency is named as an affected party in another lawsuit filed in Fresno County Superior Court by an organization called TRANSDEF, or Transportation Solutions Defense and Education Fund, against the California Air Resources Board over the use of cap-and-trade money from the state's greenhouse-gas reduction program for the high-speed train project. That case has been transferred to Sacramento County.
- The authority is intervening in a case pending in the U.S. District Ninth Circuit appeals court, filed by Kings County, the Kings County Farm Bureau, Citizens for California High-Speed Rail Accountability, the Bay Area-based Community Coalition on High-Speed Rail, California Rail Foundation and TRANSDEF, all seeking to overturn a ruling last year by the federal Surface Transportation Board that its jurisdiction over the California project supersedes the California Environmental Quality Act in favor of the less-stringent National Environmental Policy Act.
- The California Supreme Court granted the rail authority's request to file an amicus, or friend of the court, brief in Friends of Eel River vs. North Coast Railroad Authority, in which the Supreme Court is expected to decide whether federal Surface Transportation Board jurisdiction over a railroad project in Northern California pre-empts the state from enforcing the California Environmental Quality Act. The case is expected to settle conflicting opinions issued by two California appellate courts.