

ClientAlert

Energy, Infrastructure, Project and Asset Finance

March 2012

California High-Speed Rail: The Proposal for Connecting San Francisco to San Diego

In the face of potential legal challenges and funding constraints, the California High-Speed Rail Authority is proceeding with its proposal to install more than 800 miles of track for electrically powered high-speed trains to connect San Francisco to San Diego.

California's high-speed rail system will be an electrically powered high-speed train consisting of 800 miles of track from San Francisco to San Diego. The project is run by the California High-Speed Rail Authority (CHSRA), headed by a nine-member policy board the current chair of which is Dan Richard. There will be two phases of track construction. Phase 1 will be a 520-mile line that runs from Los Angeles to San Francisco, with construction beginning in the Central Valley. Once the Los Angeles to San Francisco line is complete, the line will be extended to include Sacramento and San Diego in Phase 2.

The Proposal: Route, Equipment and Infrastructure

CHSRA has proposed that the Phase 1 520-mile track connecting San Francisco to Los Angeles be constructed in six sections. The first section, called the Initial Construction Section (ICS), will be a 130-mile track connecting Fresno to Bakersfield. Bakersfield will then be connected to San Jose and Merced (the Initial Operating Section – North (IOS-North)), which in turn will be connected to the San Fernando Valley (Initial Operating Section – South (IOS-South)) and finally extended to connect San Francisco to Los Angeles/Anaheim, with about 15 stations along the way. The travel time between San Francisco and Los Angeles is estimated to be two hours and 38 minutes.

The high-speed train technology is based on electrified, steel-wheel-on-steel-rail train systems capable of speeds of up to 220 mph. The dedicated high-speed track is fully grade-separated. The majority of the high-speed train system will be at-grade alongside existing railroads, highways and roads. Mountainous and hilly areas will require tunnels, viaducts and trenches to meet high-speed train grade standards. The trains will draw electricity from a traction power system connected to the commercial power grid. An overhead contact system supported by masts and cantilever arms will bring power via a contact wire to the train.



If you have questions or comments regarding this Alert, please contact one of the lawyers listed below:

James R. Cairns
Partner, Los Angeles
+ 1 213 620 7739
jcairns@whitecase.com

James K. Lee
Partner, Los Angeles
+ 1 213 620 7714
jkleee@whitecase.com

Edward (Ned) R. Neaheer Jr.
Partner, Washington, DC
+ 1 202 626 3622
eneaheer@whitecase.com

Someera F. Khokhar
Partner, New York
+ 1 212 819 8846
skhokhar@whitecase.com

Los Angeles

White & Case LLP
633 West Fifth Street, Suite 1900
Los Angeles, California 90071
United States
+ 1 213 620 7700

Expected Ridership, Cost and Revenues

The 2012 Draft Business Plan (2012 Draft Business Plan) issued by the CHSRA gives the following estimates for ridership:

- 2025 – three years after the IOS is operational, an estimated low ridership of 7.4 million, medium ridership of 9.1 million and high ridership of 10.8 million.
- 2035 – one year after Phase 1 is operational, an estimated low ridership of 23 million, medium ridership of 28.5 million and high ridership of 34 million.
- 2060 – an estimated low ridership of 32.8 million, medium ridership of 40.7 million and high ridership of 48.5 million.

The 2009 Report to the Legislature (2009 Report) estimated that the project would be completed in 2020 for US\$42.6 billion, but the newest estimates provided in the 2012 Draft Business Plan estimate that Phase 1 will be operational in 2034 at a cost of US\$65.4 to US\$74.5 billion. The ICS from Fresno to Bakersfield is estimated to cost US\$5.2 billion.

The annual revenue estimated in the 2009 Report for 2025, five years after the project was to become operational, was US\$2.55 billion (2009 dollars) with a ridership of 36.5 million, and for 2035, which is as far as the projections extended, was US\$2.87 billion (2009 dollars) with a ridership of 41 million. The 2012 Draft Business Plan estimates as follows (in 2010 dollars):

- 2025 (IOS only) – between US\$393 and US\$580 million.
- 2035 – between US\$1.4 and US\$2.1 billion.
- 2060 – between US\$2 and US\$2.9 billion.

All of the segments of the project are projected to be profitable once they are operational and are not expected to require any subsidy.

Timeline: RFPs, Land Acquisition, Construction and Completion

Private sector participation in project construction is achieved through a two-step process. First, the CHSRA issues a Request for Qualifications (RFQ) for a discrete part of the project. Once it has evaluated the responses to the RFQ, it announces a short list of companies that may submit a bid when the CHSRA issues the Request for Proposals (RFP). In November 2011, an RFQ was issued for design/build contracts. The short list of companies qualified to bid was announced in February 2012 and the RFP is scheduled to be issued in March 2012. The list of qualified companies is set out at the end of this Alert.

The CHSRA has not yet determined how much private land it needs for the project or what the land acquisition will cost. It plans to buy all necessary parcels at fair market value. So far, US\$30 million has been set aside for land acquisition in the Los Angeles area, much of that earmarked to purchase Union Station jointly with the Los Angeles County Metropolitan Transportation Authority.

As noted below, construction in the Central Valley has been delayed until 2013. Completion of the ICS is scheduled for 2017. Completion of Phase 1 is scheduled for 2033.

Current Status

All the sections of the track are currently in the Environmental Impact Report (EIR) stage required by state and federal law. The draft EIR for the Central Valley was completed and issued in the fall of 2011. The final EIR was scheduled to be issued in January of 2012 and construction was scheduled to begin in September of 2012. Because, however, the Central Valley EIR received considerable comment and opposition, the rail authority engineers withdrew the EIR in order to revise it. The revised draft is scheduled to be issued in the summer of 2012 and the beginning of construction has been delayed until 2013.

Funding

The project will be funded by four sources: the state government, federal government, local government and private investment. California passed Proposition 1A in 2008, a bond measure that will provide US\$9.95 billion. The federal government is expected to provide between US\$17-19 billion and local governments between US\$4-5 billion. The CHSRA will seek approximately 25% of funding from private investment.

The project has so far received US\$6 billion from the state and federal government which is available for the ICS. The American Reinvestment and Recovery Act (ARRA) and the High-Speed Intercity Passenger Rail Program for federal fiscal year 2010 combine to provide US\$3.316 billion in federal funding, and US\$2.684 billion of state funding comes from Proposition 1A. About US\$1 billion of the federal funding comes from the ARRA. The construction funded by ARRA money must be completed by September 30, 2017. The CHSRA will request appropriation by the California legislature, as part of the fiscal 2012-13 budget process, of approximately US\$2.7 billion in bond proceeds for the ICS. Governor Brown has indicated his support for this funding, and legislators are scheduled to vote on it in the spring.

Completion of the IOS is estimated to cost between US\$24.7 and US\$27.3 billion in future dollars assuming 3% inflation. The CHSRA expects to use federal funding sources from new and existing programs, Proposition 1A bonds and local funding sources. The additional federal funding will not be required until the IOS construction begins, currently scheduled for 2015.

As the project is still in the planning stages, little money has yet been spent. US\$131.5 million has been allocated to pre-construction period activities.

Short-Term Challenges

The CHSRA is currently being sued by the town of Atherton and Kings County, both of which are opposed to the construction. The economic downturn and fiscal conservatism in Congress may make obtaining future federal funding difficult. Representative John Mica (R-Fla.), the chairman of the House Transportation Committee, openly opposes high-speed rail and, as noted below, the Senate recently eliminated funding for high-speed rail projects.

Long-Term Challenges

Opponents to high-speed rail include Representative John Mica, Kings County and its citizen group Citizens for California High-Speed Rail Accountability, the town of Atherton, the Palo Alto City Council, and the Kern County Board of Supervisors. The Central Valley track passes through prime farm land and is expected to receive strong opposition from farmers when the project reaches the land acquisition phase. In addition, although the CHSRA has

not yet determined what private land it will need to acquire in order to complete the project, prominent property owners that may be affected are BNSF Railway, Smart and Final, Pacific Gas & Electric, Farmland Reserve Inc. and C&S Wholesale Grocers. On the other hand, the high-speed rail project is supported by the Obama Administration, Governor Jerry Brown and the mayors of San Francisco, Sacramento, San Jose, Fresno and Los Angeles.

In addition, as noted above, in November 2011, the Senate passed legislation that eliminates future federal funding for high-speed rail projects, so the availability of such funding is uncertain at this time.

High-Speed Rail Identifies Prospective Design-Build Contractors

Request for Qualifications (RFQ) HSR11-16 Notice of Offeror Shortlist

The California High-Speed Rail Authority has determined that the following firms have submitted qualified Statements of Qualifications as a result of Request for Qualifications HSR11-16, Initial Construction Section, Construction Package #1. These firms will now be allowed to submit bids on the first segment of the high-speed rail project in the Central Valley when the Request for Proposals (RFP) is released.

The companies on the high-speed rail design-build shortlist are listed in alphabetical order as follows:

Firm	Small Business (SB) Contact	Non-SB Contact
California Backbone Builders	Christopher Smith csmith@ferrovial.us.com (512) 637-8592	Daniel Filer dfiler@ferrovial.us.com (512) 637-8587
California High-Speed Rail Partners	Lynn Romano Lynn.romano@fluor.com (949) 349-2896	Chuck Lines Chuck.lines@flour.com (949) 349-4512
California High-Speed Ventures	Verenise Di Salvi Verenise.DiSalvi@Kiewit.com (707) 439-7300 Ext. 7357	Jeff Riley Jeff.riley@kiewit.com (707) 439-7300
Dragados/Flatiron/Shimmick	Shannon Reid DFS-HSR-SB@flatironcorp.com (707) 742-6078	Walter Quincy wquincy@flatironcorp.com (707) 742-6039
Tutor Perini/Zachry/Parsons	Sarah Morris Sarah.Morris@tutorperini.com Phone: (818) 362-8391 Ext. 5637	Mike Barge Mike.Barge@tutorperini.com Phone: (818) 362-8391 Ext. 5572
		Gerald Brown Jerry.brown@tutorperini.com (818) 362-8391

Client **Alert**

Energy, Infrastructure, Project and Asset Finance

This Client Alert is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This Client Alert should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This Client Alert is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.

whitecase.com