



March 4, 2019

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Ms. Jamie Rennert
Director, Office of Program Delivery
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Notice of Intent to Terminate Cooperative Agreement No. FR-HSR-0118-12-01-01

Dear Ms. Rennert:

I am responding on behalf of the California High-Speed Rail Authority ("CHSRA") to Ronald Batory's February 19, 2019 notification that the Federal Railroad Administration ("FRA") intends to terminate Cooperative Agreement No. FR-HSR-0118-12-01-01 ("FY10 Agreement" or "Agreement") and de-obligate the \$928,620,000 obligated under the Agreement effective March 5, 2019.

I urge the FRA to reconsider the precipitous and unjustified action it is contemplating. Termination of the FY10 Agreement would be unwarranted, unprecedented, and legally indefensible, and it would gravely harm a historic project on which the FRA and the CHSRA have collaborated productively for nearly a decade.

As detailed below, the CHSRA is meeting its commitments under the FY10 Agreement and Cooperative Agreement No. FR-HSR-0009-10-01-06 (the "ARRA Agreement"). The CHSRA is making reasonable progress on the Project.¹ And, far from abandoning the ultimate vision of a California high-speed rail system running from northern to southern California, Governor Newsom is proposing billions of dollars in additional state funding to expand the initial construction project in the Central Valley required by the ARRA Agreement. This expanded system will connect three of the largest cities in the Central Valley (Merced, Fresno, and Bakersfield), providing service to millions of individuals and transforming the economy of one of the nation's most economically distressed regions, as well as providing important transit connectivity to Los Angeles, the Bay Area, and Sacramento. The threatened termination of funding, by contrast, would cause massive disruption, dislocation, and waste, damaging the region and endangering the future of high-speed rail in California and elsewhere in the nation.

Accordingly, the FRA should reconsider the rash and unlawful action it is contemplating and instead engage in reasoned and structured discussion with the CHSRA of its concerns. The FRA's threat to terminate funding under the FY10 Agreement on two weeks' notice is a sharp departure from the productive, collaborative relationship previously enjoyed by the FRA and the CHSRA. In light of that relationship, and the disruption and waste that abrupt termination of the Agreement would cause, we owe it to the residents of the Central Valley, state and federal

¹ Unless otherwise indicated by context, "Project" refers to Tasks 1 through 10 listed in the FY10 Agreement and the ARRA Agreement.

taxpayers, and the nation as a whole to continue cooperating on our historic and transformative high-speed rail project.

EXECUTIVE SUMMARY

The February 19, 2019 notification letter from Mr. Batory (the "Notice") asserts that the CHSRA has materially breached the FY10 Agreement based on four factors. But none of the conduct identified by the Notice constitutes a material breach of the Agreement, and the Notice's assertions of additional unidentified breaches are contradicted by the FRA's previous acknowledgements that the CHSRA has been complying with the essentially identical terms of the ARRA Agreement.

For example, although the Notice asserts that the CHSRA has failed to make required expenditures, the only shortfall that it identifies is the failure to meet projected design and construction expenditures in December 2018. Deviations from projected expenditures are, however, routine in any large construction project, and nothing in the FY10 Agreement makes such a deviation a breach, much less a material one.

Moreover, far from asserting any prior material breaches, the FRA repeatedly has acknowledged that the CHSRA was complying with its obligations. Under the ARRA Agreement, the FRA was permitted to release funds only if the CHSRA was complying with the Agreement. Nevertheless, the FRA released all the ARRA funds, making over 450 separate payments to the CHSRA from March 2011 to September 2017, when the account closed, thereby acknowledging the CHSRA's compliance with its spending (and other) obligations.

The Notice's other assertions of non-compliance are similarly unsupported. While the Notice concludes that the CHSRA will not complete the Project by the end of 2022, the only documents cited in support of this conclusion expressly state that the Project will be completed by then. Even more fundamentally, the Notice does not point to any "time is of the essence" clause or other provision in the Agreement making completion by 2022 material. The Notice similarly fails to identify any specific deliverables that the CHSRA has failed to satisfy, much less to explain why such failures would be material and cannot be cured. Finally, contrary to the Notice's assertion, the CHSRA has not failed to take any corrective action required by the FRA: indeed, the FRA has notified the CHSRA of only one corrective action, which the CHSRA completed.

The Notice also asserts that the CHSRA has failed to make reasonable progress on the Project. Here again, the Notice's assertion is belied by the FRA's prior conduct. In addition to prohibiting the release of funds absent compliance, the ARRA Agreement prohibited the release of funds unless the CHSRA was making adequate and timely progress. As a consequence, when FRA released funds under that Agreement from March 2011 through September 2017, it necessarily acknowledged that the CHSRA was making reasonable progress. Moreover, nothing in the Notice suggests that the CHSRA has stopped doing so. To the contrary, in the last year the CHSRA has made important progress in completing the Project. Indeed, there are now 24 active or completed construction sites in the Central Valley, employing more than 2,600 workers, who are realigning roads and utilities, building bridges, viaducts, and crossings, as well as grading roads and constructing embankments.

California has not changed the overall purpose of its High-Speed Rail Plan, nor has it frustrated the purpose of the Agreement. To the contrary, Governor Newsom has reiterated his support for the vision of his predecessors. He is, however, focused on completing the current project in the Central Valley and maximizing the benefits of that project. Far from frustrating the purpose of the Agreement, he is proposing to expand the construction contemplated by the Agreement so that the first building block of

the high-speed rail program will bring the benefits of high-speed rail to three of the largest cities in the Central Valley and three of the fastest growing counties in California.

The threatened termination of the FY10 Agreement on two weeks' notice is a sharp and wasteful departure from the FRA's fruitful collaboration with the CHSRA, which is necessary to complete any large infrastructure project. If this abrupt termination occurs, the FRA will not only endanger the historic project on which it has collaborated for nearly a decade; it also will set a troubling precedent that may undermine future infrastructure projects funded through state-federal partnerships. Accordingly, the CHSRA urges the FRA to reconsider its contemplated action or, at a minimum, to engage in structured discussions to share facts, clarify misunderstandings, and resolve disagreements.

DISCUSSION

I. THE CHSRA HAS NOT MATERIALLY BREACHED THE FY10 AGREEMENT

The Notice asserts that the CHSRA has materially breached the terms of the FY10 Agreement based on four specified factors.² The Notice, however, fails to identify any material breaches and thus fails to provide any legitimate ground for terminating the Agreement for non-compliance.

A. The CHSRA has Committed and Spent More Than Sufficient State Funds for the Project

The first factor specified in the Notice is the failure to make required State expenditures. The Notice, however, identifies only one specific shortfall: the CHSRA's expenditure of \$47.9 million rather than the \$141.8 projected on final design and construction in December 2018. It is true that the last quarterly Funding Contribution Plan projected design and construction expenditures of \$141.8 million in December 2018, and that only \$47.9 million was actually spent. But nothing in the FY10 Agreement required a \$141.8 million expenditure in December 2018 or that the CHSRA meet its expenditure projections each month.

Projections are just estimates for a given period. A deviation from such estimates is not a material breach. In any civil infrastructure project, the exact pace of the final design and construction activities varies over the duration of the project. If the projected progress in one month does not match the actual progress, the pace of the progress in subsequent months can be accelerated. This is especially true with delays early in a project when critical path items are being constructed because such delays may delay the commencement of others. But later noncritical path items can be accelerated to make up for the lost time and bring the project back on schedule.

The Notice's assertion that the current pace of state expenditures breaches the FY10 Agreement is also puzzling because CHSRA is not yet making expenditures under the FY10 Agreement. The FY10 Agreement funds the final set of tasks needed to complete the Project. The rest of the funding for the Project is being provided by the State and by the ARRA Agreement. Although the federal money granted under the ARRA Agreement was exhausted in September 2017, when the ARRA appropriation account closed, the CHSRA is still in the process of spending \$2.5 billion in matching state funds under the ARRA Agreement.

² The Notice states that the FRA's assertion of material breach is based on "many" factors, but only identifies four areas of noncompliance. The CHSRA cannot respond to allegations concerning factors that have not been identified, and it would be fundamentally unfair for the FRA to terminate the Agreement based on factors that it has not given the CHSRA a chance either to contest or to cure.

Far from finding that the State materially breached the terms of the ARRA Agreement, the FRA repeatedly has recognized the CHSRA's compliance with that agreement. Under Section 7(b) of the General Provisions in Attachment 2 of the ARRA Agreement, the FRA may authorize release of funds only if it receives adequate documentation of a cost *and* the CHSRA is "complying with its obligations" under the ARRA Agreement. Pursuant to this provision, the FRA made over 450 separate payments to CHSRA from March 2011 through September 2017, thereby acknowledging that the CHSRA has been complying with its obligations.

Moreover, California is well ahead of schedule in meeting its matching obligation under the ARRA Agreement. As of December 2018, the CHSRA has submitted for FRA approval \$970 million in state matching funds, which is 39% of California's \$2.5 billion match requirement. As only 26% of the period for achieving this match has expired, California is plainly on track to meet its state match funding obligation under the ARRA Agreement. Furthermore, in 2018 the CHSRA committed an additional \$3.1 billion in state funding toward the Project, which would result in a total State contribution of 71% of the Project's cost. Thus, the State has committed to more than its fair share of the Project, and there has been no breach of the State's spending obligations.

B. The CHSRA Remains Committed to Completing the Project by December 31, 2022

The second factor identified by the Notice is that the CHSRA will not complete the Project by December 31, 2022. Here again, the facts identified by the Notice fall short.

The Notice asserts that the FRA's evaluation of various documents shows that the CHSRA cannot complete the Project by the end of 2022. But the only documents that the Notice identifies are CHSRA's Fourth Quarter 2018 Summary Schedule and its February 2019 Finance and Audit Committee reports. Far from showing that the Project will not be completed by 2022, the Fourth Quarter 2018 Summary Schedule shows that most work on the Project will be completed by March 2022 and the four final tasks by the end of that year. The Notice's reliance on the 2019 Finance and Audit Committee Reports is equally misplaced. According to the monthly report that the committee received this February, the construction packages in the Central Valley will be completed by December 31, 2020, August 31, 2021, March 31, 2022, and December 31, 2022.

Completing these packages on this schedule will be challenging. But as most recently outlined at the February 19, 2019 Finance and Audit Committee meeting with the public in attendance, the CHSRA acknowledges the risks to the project schedule that must be monitored and mitigated to keep the Project on track. The Authority is therefore implementing strategies to meet those challenges, and its Chief Operating Officer has set out the construction expenditure plan required to meet the December 31, 2022 deadline as well as creating cross-functional Strike Teams to clear project work sites, establishing teams to resolve commercial contractor charges and claims, and appointing an Executive COO and a Deputy COO focused solely on increasing construction productivity. The Notice does not—and cannot—explain why despite these actions the CHSRA cannot complete the Project by the end of 2022.

The FRA also notes one report submitted to the CHSRA's Finance and Audit Committee shows that a contractor has expended only 25.1% of a contract price even though 86.5% of the contract period has elapsed. But this report concerns "Construction Package 4," which is just one of four contract packages. The Notice offers no reason to believe that a delay in the completion of this one aspect of the Project will prevent completion of the overall Project by December 31, 2022, which is still more than three years away. Indeed, as the FRA knows, the CHSRA has been in active negotiations to correct the completion date for that contract package consistent with completion of the overall Project by the end of 2022.

Even more fundamentally, the Notice does not explain why a delay in completion of the overall Project would constitute a material breach of the FY10 Agreement. The Agreement contains no "time is of the essence" provision. Nor does the Agreement's termination provision state that failure to achieve 100% completion by the end of 2022 constitutes grounds for termination. To the contrary, Section 23.c of the General Provisions in Attachment 2 of the Agreement states that "[e]xpiration of any Project time period established for this Project does not, by itself, constitute an expiration or termination of this Agreement."

It is also surprising to us that the FRA is now finding the Project hopelessly and fatally delayed, because the agency has refused for nearly a year to take simple actions that would accelerate the Project. In June 2018, the CHSRA applied to conduct environmental reviews under the National Environment Policy Act concurrent with our robust state environmental review process. As staff at the United States Department of Transportation as well as the FRA have acknowledged, this simple measure would save months in project review (as well as millions of dollars in redundant expenses). Nevertheless, the FRA has not acted on our application, and, to make matters worse, since last August it has failed to conduct even the most routine review and approval of documents necessary to advance the environmental clearance process. The FRA should not point to delays, assert that future deadlines will be missed, and abandon the Project when it has failed to take simple steps to reduce delays.

The need to amend an interim schedule does not suggest or establish that a project cannot be completed or that its ultimate value will be diminished, and it certainly provides no reason to terminate the FRA's participation in a multi-billion-dollar project. The FRA should be working with the CHSRA on ways to limit those delays and expedite completion of the Project. Large design-build public transportation projects encounter scores of challenges and therefore require persistence, creativity, and inter-agency cooperation.

C. The CHSRA Is Meeting Its Obligations to Submit Deliverables

The Notice asserts that the CHSRA has failed to submit "critical grant deliverables," including Funding Contribution Plans. In particular, it asserts that the FRA has found over 40 reports and deliverables either delinquent or lacking sufficient information. This is the first time that the FRA has identified deliverables as an issue so major that it might justify termination of the FY10 Agreement, and because the Notice fails to identify any particular report or deliverable, much less the deficiency in it, the CHSRA is not in a position to respond fully to this concern at this time. Nonetheless, it is clear that these asserted deficiencies do not justify termination of the Agreement.

First, a lack of sufficient information in deliverables is no basis for declaring a material breach, much less termination, because such deficiencies are obviously curable.

Second, while the Notice asserts that the FRA has found 40 reports and deliverables deficient since 2016, the FRA previously recognized that there were no material deficiencies before September 2017. As noted above, until the ARRA Agreement funds were exhausted in September 2017, the FRA approved payments under that agreement, thereby acknowledging that CHSRA was in compliance with the agreement. As the deliverables under the ARRA Agreement overlap with those under the FY10 Agreement, there could not have been any material breach of the latter concerning deliverables prior to September 2017. Moreover, nothing in the Notice suggests that any deficiencies since that time are any different in kind or number than those before.

Third, the CHSRA has made substantial submissions to the FRA. In total, it has delivered to the FRA 121 documents and plans specifically identified in the Agreements, including detailed reports, environmental documents, design plans, and other plans. The CHSRA is unaware of any deliverables

that have not been submitted other than four that were due at the end of last year, which the CHSRA has been unable to deliver because of the government shutdown and the FRA's subsequent delay in providing routine guidance concerning the content of those documents requested by the CHSRA.

While some other deliverables have been delayed, many of the delays were also attributable to the FRA. For example, environmental deliverables were delayed when the FRA ceased all work on environmental approvals pending resolution to the CHSRA's NEPA Assignment request. Other deliverables, such as the Interim Service Development Plan, were delayed while the CHSRA awaited guidance on the content of those documents, and still others such as the Program Management Plan were delayed because the FRA changed the guidance it provided or requested additional information. Because the Notice fails to identify the deliverables it contends were deficient, it is impossible to say how many of the deficiencies asserted by the FRA are attributable to its own action or inaction.

D. The CHSRA Has Not Failed to Take Corrective Actions or Respond to The FRA's Monitoring

Finally, the Notice asserts that the CHSRA has consistently failed to take appropriate corrective action. That is simply false. Under the procedures established by the FRA, if the FRA determines that a corrective action is required, it is supposed to issue a finding and a notice of the corrective actions required, usually in its monitoring reports. The FRA has issued only one such finding and notice under the ARRA and FY10 Agreements. That was in a 2014 review related to the CHSRA's oversight of a contractor's compliance with permit requirements, and the CHSRA promptly implemented a corrective action plan, which resolved the matter.

The FRA's own reports confirm that, contrary to the Notice's suggestion, the CHSRA has not failed to take corrective actions. The last monitoring report CHSRA received from the FRA was dated February 12, 2018, and the summary table of items requiring corrective action in the report is empty.

The Notice asserts that the FRA identified areas of interest in the 2017 annual monitoring review, which the CHSRA failed to satisfactorily address. This does not support the Notice's assertion that the CHSRA has failed to take corrective actions because *the FRA never notified the CHSRA that corrective action was required.*

Moreover, contrary to the Notice's suggestion, the CHSRA has spent considerable time and effort responding to issues raised in the FRA's annual monitoring reviews. Indeed, every year the FRA and the CHSRA conduct a Site Monitoring Review, which includes a one-day site review at the CHSRA's Sacramento headquarters office and three days in the Central Valley reviewing each construction package (this includes a one-day site tour of the construction packages). This week-long review covers multiple topics and involves every aspect of the program from grant management to construction oversight, providing the CHSRA and the FRA an opportunity to review issues that have arisen over the year and ongoing future needs and concerns. There has never been a suggestion before that the CHSRA fails to address the issues raised by the FRA or has failed to satisfactorily address them.

The Notice offers only one example of a supposed failure to respond to its monitoring: the CHSRA, it asserts, has not developed "realistic Project Schedules and budgets based on past performance and trends." In fact, however, the CHSRA has made extensive efforts to update and improve its scheduling and budgeting process. For example, in June 2018, as part of its business plan process, the CHSRA completed an updated baseline cost estimate and budget to complete the work underway, an updated schedule for completion, and an implementation plan for passenger service and completion of the federal grant agreement.

In addition, numerous examples of the CHSRA responding to the FRA concerns can be cited. For example:

- **Staff Capability and Capacity**—In response to the FRA's suggestion that the CHSRA reorganize staff to facilitate project delivery and fill key positions with project delivery experts, in August 2017, the CHSRA created a new Program Delivery Office, restructured to focus on program delivery and made improvements in its governance and decision-making structure to improve internal communications.
- **Internal Processes**—In response to the FRA's suggestion to implement a control system addressing Program Management Plan requirements, the CHSRA established a Program Management and Oversight branch and implemented a more formalized process of configuration management and change control.
- **Service Development Planning**—In response to the FRA's suggestion that the CHSRA explain the independent utility of the Central Valley portion of the high-speed rail program, the CHSRA contracted with an Early Train Operator consultant, which evaluated different service options, including a Merced to Bakersfield approach, that were discussed in the CHSRA's 2018 Business Plan and will be discussed further in a report to the Legislature in May 2019.
- **Right-of-Way Acquisitions**—In response to the FRA's suggestion to increase the pace of right-of-way acquisitions, the CHSRA stepped up its acquisitions so, for example, acquisitions for Construction Package 4, increased from 39% complete in 2017 to 80% by December 2018. For all Construction Packages, 74% of the property needed has been delivered to the design-build contractors.

Here again, the Notice has failed to show any material breach of the terms of the FY10 Agreement that could justify termination of the Project.

II. THE CHSRA IS MAKING REASONABLE PROGRESS ON THE PROJECT

In addition to asserting that the CHSRA materially breached its commitments and obligations under the Agreement, the Notice contends that the CHSRA is not making reasonable progress on the Project. That is also wrong.

Since the CHSRA has not yet accessed FY10 Agreement funding as it spends down the required State matching dollars, progress must be measured against the ARRA Agreement. In releasing funds under the ARRA Agreement, however, the FRA has acknowledged that the CHSRA has been making reasonable progress. In addition to prohibiting payments absent compliance, the ARRA Agreement prohibited payments unless the CHSRA was "making adequate and timely progress toward Project completion." As the FRA made over 450 payments under the ARRA Agreement from March 2011 through September 2017, the CHSRA must have been making adequate progress into at least the third quarter of 2017.

Nothing in the Notice shows that progress has materially stalled since then. To the contrary, CHSRA has continued to make substantial progress. Indeed, at this point:

- 90% of the design work on the Project has been completed, and 74% of the rights of way have been delivered to the CHSRA's contractors;
- There are more than 24 active or completed construction sites in the Central Valley;

- State Route 99 has been realigned, and the realignment of other roads as well as utilities is in progress;
- Two overhead crossings, a bridge, and a viaduct have been completed; two other viaducts as well as a trench in Fresno are in progress; and abutments for bridges and ponds are being constructed;
- Over 44 miles of grading and embankment work is either finished or in progress; and
- In total, the Project has employed more than 2,600 workers in the Central Valley, involved 488 small businesses, and achieved nearly \$6 billion in economic output.

Overall, the CHSRA has made significant progress on multiple sections in the Central Valley portion of the high-speed rail program concurrently to more quickly deliver statewide mobility and environmental benefits. In light of these significant and visible achievements, it is critical for both the FRA and the CHSRA, as stewards of the significant taxpayer funds invested so far, to complete the Project. Otherwise, we risk both failure and the unthinkable abandonment of a partially completed Project that would not be fit for the purpose for which the taxpayers have made this investment.

III. CALIFORNIA HAS NOT CHANGED THE OVERALL PURPOSE OF THE HIGH-SPEED RAIL SYSTEM

The Notice's final objection is that Governor Newsom, in his recent State of the State Address, changed the overall goal for High-Speed Rail in California and made a proposal that frustrates the purpose for which federal funding was awarded. Nothing could be further from the truth.

In his State of the State Address, Governor Newsom expressly confirmed that he shares that ambitious vision for high-speed rail of his predecessors Governors Brown and Schwarzenegger. Moreover, as I made clear in a recent memorandum to the chairman of the High-Speed Rail Authority, the Authority's ultimate goal remains a high-speed rail system that connects San Francisco to Los Angeles/Anaheim and that eventually will reach north to Sacramento and south to San Diego. The Governor merely identified a pragmatic, near-term focus, which is to "get trains on the ground" in the Central Valley and to lay the foundation for the San Francisco to Los Angeles/Anaheim service. Like all mega-infrastructure projects, the California high-speed rail system will be completed in building blocks with each block placed in service upon completion with future funding and construction eventually expanding the system to its ultimate extent.

Far from frustrating the purpose of the FY10 and ARRA grants, the Governor's focus expands that purpose and maximizes the utility of the first building block in the high-speed rail program. These grants are for construction of the initial portion of the high-speed rail system, and they require the CHSRA to construct a 119-mile segment from Poplar Avenue, approximately 15 miles north of Bakersfield, to Madera. Governor Newsom is proposing to expand this project by 50 miles—with California bearing the expense of doing so—to reach south into downtown Bakersfield and north to Merced, so that this initial segment will connect three of the largest cities in the Central Valley (Merced, Fresno, and Bakersfield), three major universities and three of the fastest growing California counties, as well as providing important transit connectivity to the Altamont Corridor Express (ACE) and Amtrak traveling to the Bay Area and Sacramento and to bus services traveling from Bakersfield to Los Angeles.

This expansion will make the initial building block of the high-speed rail program more immediately productive, which furthers, rather than frustrates, the purpose of the federal grants. The expanded Central Valley project also furthers the ultimate goal of a statewide high-speed rail system by ensuring that the first step in California's high-speed rail system brings tangible benefits that will encourage extension to the San Francisco Bay area and then to the Los Angeles basin.

IV. THE THREATENED TERMINATION OF THE FY10 AGREEMENT IS A SHARP AND UNFORTUNATE DEPARTURE FROM PRIOR PRACTICE

In addition to being unjustified, the FRA's sudden threat to end the Project on two weeks' notice is a sharp—and wasteful—departure from its fruitful collaboration until now with the CHSRA.

For nearly a decade, the CHSRA and the FRA have been working together toward our common goal of achieving the first true high-speed rail system in the United States. A project of this magnitude faces challenges at every stage, from planning, funding, environmental review, and acquisition of private property to the physical challenges of construction that cannot be fully predicted or addressed until dirt is actually moved. Consequently, the cooperation and, at times, patience of numerous agencies and municipalities is required. Until now, the CHSRA and the FRA have enjoyed such cooperation including, among other things, amending the ARRA Agreement six times to accommodate various changes.

Together, the agencies have overcome numerous hurdles since the original execution of the grant agreements in 2010 and 2011. For example, in 2012, after litigation challenging the Project was filed, the FRA and the CHSRA renegotiated the ARRA grant terms to allow a tapered match payment arrangement whereby the federal ARRA funds would be used first to pay for capital costs until fully expended, which occurred in September 2017, followed by state match until the full match amount is spent. Similarly, in late 2013, as the same litigation was on appeal, the FRA and the CHSRA mutually agreed to slow down the project construction, pending the results of the appeal or access to alternative state matching funds. And the FRA and the CHSRA continued to cooperate under a tapered match arrangement to assure the full use of the federal ARRA funds prior to the September 2017 statutory deadline.

While much remains to be done, we are proud of the progress we have made. Terminating the FY10 Agreement now, especially without providing the CHSRA a fair and reasonable opportunity to be heard, would have grave consequences. Especially if paired with the clawback that the Notice threatens, termination would create uncertainty over the future of a project that has created 2,600 jobs in the Central Valley, a region that has struggled economically, and ultimately may leave that area strewn with unfinished bridges, overpasses, and viaducts.

This termination, should it go forward, also would set a troubling precedent that would undermine future infrastructure projects nationwide. Especially given the precipitous manner in which termination and withdrawal of funds has been threatened, the termination would cast doubt on the reliability of the federal government as a partner in delivering on *its* funding commitments. As a result, states may be unwilling to join the federal government in investing billions of dollars on future infrastructure projects, leaving the federal government with the unenviable choice of funding those projects itself or leaving them undone.

I urge the FRA and the Federal Government to focus on the important goal we have set together for California and the rest of the nation: to complete the first building block of a statewide high-speed rail system. That goal was established in partnership with the FRA in 2010 and 2011 when the ARRA and FY10 grant funds were awarded. Since that time, California has appropriated matching state funds, including Proposition 1A and Greenhouse Gas Reduction funds. Thus, based on the best available estimates the state and federal funds needed to satisfy capital costs to complete Central Valley construction, including right of way acquisition, construction management, environmental mitigation, final design, construction, and interim service, have all been committed or identified. Moreover, extensive construction is already underway. The FRA should not step away and waste all of these efforts.

At a minimum, in light of the massive disruption and waste that an abrupt termination would cause, I ask the FRA to agree to engage in a sincere effort to work through the issues raised in the Notice and save the

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nearly decade of collaboration on our historic high-speed rail project. Before any precipitous and potentially irreparable action is taken, the FRA should specify the deficiencies that the Notice only vaguely references and give the CHSRA an opportunity to respond to them individually and, where justified and still live, to discuss ways in which to cure or mitigate them. We also should engage in a meaningful discussion of how such issues may be cured in a more prompt and productive fashion without endangering a multibillion dollar project employing thousands of workers. And, finally, before concluding that the Project cannot be completed and abandoning it, the FRA officials should come to California and inspect the Project so that they can see for themselves both the great progress that has been made and the devastating harm that abandoning the Project at this stage would cause.

Please contact us so that we can begin to make these arrangements as soon as possible and remove any cloud over the Project. We owe it to taxpayers to continue our cooperation on this historic endeavor and to act in good faith as stewards of the funds spent and to be spent in the Agreement.

CONCLUSION

Based on the above, I urge the FRA to decide that the FY10 Agreement should not be terminated or, at a minimum, that it defer any final termination decision and meet constructively with the CHSRA to resolve any and all issues of concern and preserve the historic Project on which we have cooperated for so long.

Thank you for your consideration.

Respectfully,



Brian P. Kelly
Chief Executive Officer