

SUPREME COURT COPY

Case No. S222472
IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River and Californians for Alternatives to Toxics,
Plaintiffs and Appellants

v.

**North Coast Railroad Authority and Board of Directors of North
Coast Railroad Authority,**
Defendants and Respondents

Northwestern Pacific Railroad Company,
Real Party in Interest and Respondent

After a Decision by the First District Court of Appeal
First Appellate District, Division One
Case Nos. A139222, A139235

Appeal from the Marin County Superior Court,
Case Nos. CIV11-03605, CIV11-03591
Honorable Roy Chernus, Judge

SUPREME COURT
FILED

JUN 08 2015

Frank A. McGuire Clerk

Deputy

**MOTION REQUESTING JUDICIAL NOTICE
BY MADERA COUNTY FARM BUREAU AND MERCED
COUNTY FARM BUREAU;
DECLARATION OF JASON W. HOLDER;
PROPOSED ORDER**

((Proposed) Amici Curiae in Support of Petitioners)

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and Merced County Farm Bureau*

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MOTION REQUESTING JUDICIAL NOTICE

Proposed Amici Curiae Madera County Farm Bureau and Merced County Farm Bureau (collectively, “Amici”) hereby move and request, pursuant to California Rules of Court, rules 8.520(g) and 8.252 and Evidence Code, sections 452, subdivisions (c) and (d), 453, 459, and 1280, that the Court take judicial notice of the following documents:

- Exhibit A: Excerpts from certified Program Environmental Impact Report/Environmental Impact Statement for the Statewide HSR Project (“Statewide PEIR/S”);
- Exhibit B: Resolution HSRA# 05-01, certifying the Statewide PEIR/PEIS as being completed in compliance with CEQA and that project-level review would be completed in compliance with CEQA, and excerpts of adopted CEQA findings;
- Exhibit C: California High-Speed Rail Authority (“Authority”) Staff Memorandum regarding deferring analysis of wye alignments.
- Exhibit D: Resolution HSRA# 11-19, directing staff to defer analysis of wye alignments;
- Exhibit E: Excerpts from certified project-level Environmental Impact Report/Environmental Impact Statement for the Merced to Fresno Section of the HSR Project (“MF EIR/EIS”);
- Exhibit F: Resolution HSRA# 12-19, certifying MF EIR/EIS as being completed in compliance with CEQA;
- Exhibit G: Resolution HSRA# 12-20, approving portions of the M-F Section and stating that subsequent environmental review pursuant to CEQA would be performed for an area known as the “Chowchilla Wye” box, and excerpts of adopted CEQA findings;
- Exhibit H: Certification of the Administrative Record, Project Final Environmental Impact Report (EIR), Merced to Fresno Section, California High-Speed Train, Public Resources Code, §21167.6 (Sept. 12, 2012) (“Record Certification”);

Exhibit I: Final Judgment Granting in Part and Denying in Part Petitioners' Verified Petition for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief, with attached rulings on submitted matter, entered February 1, 2012 ("Final Judgment") in the cases, City of Palo Alto, et al. v. California High-Speed Rail Authority and Town of Atherton, et al. v. California High-Speed Rail Authority (collectively, "*Atherton II*"); and

Exhibit J: Surface Transportation Board ("STB"), Decision Granting Declaratory Order, dated December 12, 2015 (STB Docket No. FD 35861) ("STB Decision").

As set forth in the accompanying Declaration of Jason W. Holder ("Holder Declaration"), each of the foregoing is a true and correct copy of an excerpt from or the entirety of the original. Exhibits A through G are also part of the certified administrative record ("Record") for the lawsuit brought by Amici against the Authority.

This motion is also based upon the accompanying Memorandum of Points and Authorities and Holder Declaration.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF REQUEST FOR JUDICIAL NOTICE**

I.

INTRODUCTION

This Court may accept facts outside the record that are presented by amici if those facts are subject to judicial notice. (*See Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143-144 [taking judicial notice of proceedings of the Public Utilities Commission, despite party's failure to raise issue below]; *see also Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 405 [deciding that an appendix attached to an amicus brief that included several declarations and factual statements outside of the record were subject to judicial notice and facilitated informed judicial

considerations].) As explained below, each of the attached exhibits are subject to judicial notice. Because these relevant documents may not be readily available, Amici are providing the copies of the cited documents for the convenience of this Court.

II. ARGUMENT

Under Evidence Code Section 459, subdivision (a), a reviewing court may take judicial notice of any matter specified in Evidence Code Section 452. Evidence Code Section 452 provides that judicial notice may be taken of, *inter alia*, “[r]ecords of ... any court of this state” and “official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (Evid. Code §452(c), (d).) The documents described above and attached hereto are within these categories; therefore, judicial notice is proper as to each of these documents. These documents were not submitted in the proceedings below.

The attached exhibits are each relevant to the issues presented in the underlying appeal. Specifically, the attached exhibits are evidence concerning (1) the state’s exercise of its sovereign authority to govern how its subdivision, the Authority, makes decisions that affect California’s environment and (2) commitments and assurances made by the Authority to conduct tiered environmental review, pursuant to CEQA, when carrying out the HSR Project. Each document is cited by Amici in their brief.

A. This Court Should Take Judicial Notice of Exhibits A through I, Pursuant to Evidence Code, section 452(d), as Filings of Record of a Court of this State.

Amici request that this Court take judicial notice of Exhibits A through I pursuant to Evidence Code section 452, subdivision (d), on the basis that all of these documents are filings of record of a court of this state.

Exhibits A through G are part of the Record for the M-F Litigation, as certified by the Authority and lodged with the Sacramento County Superior Court in Case No. 34-2012-80001165-CU-WM-GDS. (*See* Holder Decl., pp. 1-2, ¶3, 5.)¹ Exhibit H is the Record Certification verifying the truth, accuracy, and completeness of the documents in the Record, and was also lodged with the trial court. (*Ibid.*)

Exhibit I is the Final Judgment in the *Atherton II* litigation. This document is also subject to judicial notice pursuant to Evidence Code section 452, subdivision (d). Exhibit I may be introduced for the truth of the results reached by the Court in the Rulings on Submitted Matter attached to the Final Judgment and the trial court's reasons for reaching those results. (*See Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130 [“[Courts] may take judicial notice of the existence of judicial opinions and court documents, *along with the truth of the results reached*—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact”], citing *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 418 and *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914.)

¹ Upon request, Amici can and will provide any additional pages from the certified administrative record from which Exhibits A through G were derived.

B. The Court Should Take Judicial Notice of Exhibits A through H, Pursuant to Evidence Code, section 452(c), as “Official Acts” of Subdivisions of the State of California and Exhibit J as an “Official Act” of the Executive Branch of the United States.

Amici request that this Court take judicial notice of Exhibits A through H, pursuant to Evidence Code section 452, subdivision (c), which authorizes judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

Exhibits A and E, excerpts from the Statewide PEIR/S and the FEIR/S for the M-F Section, respectively, are subject to judicial notice pursuant to Evidence Code section 452, subdivision (c). In *Fowler v. Howell*, the court explained that “official acts” under Section 452, subdivision (c) include “the records and files” of a public entity covered by the subdivision. (*Fowler v. Howell* (1996) 42 Cal.App.4th 1746 1750; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 732, n. 9; see also *Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 375, fn. 4.)

Similarly, Exhibits B, D, F, and G are subject to judicial notice as official acts, pursuant to Section 452, subdivision (c), because resolutions passed by the Authority’s Board are the agency’s official acts and are from the Authority’s own records and files, as certified by the Authority. (See *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518 [“Official acts [subject to permissive judicial notice] include records, reports and orders of administrative agencies”], citing *Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125, *McGlothlen v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 1005, 1015, and *Agostini v. Strycula* (1965) 231 Cal.App.2d 804, 806.) Similarly, Exhibit C is subject to judicial notice as an official act because it was prepared by the Authority’s staff, presented to the

Authority's Board, and is within the Authority's files, as certified by the Authority. Exhibit H is also subject to judicial notice as an official act because it was prepared by Authority staff and satisfied the Authority's duty to certify the Record for the litigation concerning the M-F Section.

Likewise, Exhibit J is subject to judicial notice as an official act of the Surface Transportation Board, an agency within the executive department of the United States. (*See Western States Petroleum Ass'n v. Department of Health Services* (2002) 99 Cal.App.4th 999, 1002 [taking judicial notice, pursuant to Section 452(c), of the federal Environmental Protection Agency's notice of intent to initiate rulemaking and antidegradation policy].)

For these reasons, Exhibits A through H and J are "official acts" of state and federal agencies that are judicially noticeable under Evidence Code section 452, subdivision (c)

C. The Court May Take Judicial Notice of the Truth of, *Inter Alia*, Events Leading to Tiered Environmental Review and Successive Approvals for the HSR Project, Conditions Imposed on the HSR Project, and Conclusions Reached by the Authority, STB and Courts Within Exhibits A through J.

Under the official records exception to the hearsay rule, the Court may take judicial notice of an act, condition, or event if all of the following elements are satisfied: (a) the writing was made by and within the scope of duty of a public employee, (b) the writing was made at or near the time of the act, condition, or event, and (c) the sources of information and method and time of preparation were such as to indicate its trustworthiness. (*See Evid. Code*, § 1280; *see also People v. Martinez* (2000) 22 Cal.4th 106, 119-134 [applying three-part test for official records exception].)

Exhibits A through H and J fall within this exception. Here, the comments on the Statewide PEIR/S made by federal and state agencies were made within the scope of duty of public employees, they were made at

the time the federal and state agencies criticized the Statewide PEIR/S and requested additional analysis and formulation of mitigation measures, and the Authority's certification of the Statewide PEIR/S, including the comments indicate the documents' trustworthiness. (*See* Evid. Code, § 664 ["[i]t is presumed that official duty has been regularly performed".]) Similarly, the Court may take judicial notice of the conditions expressed in the Authority's responses to these comments (namely, that second-tier environmental review would be performed pursuant to CEQA). Additionally, and for the same reasons, the Court may take judicial notice of the conditions expressed in the Authority's approval resolutions and in the STB Decision.

Further, no additional foundation or authentication is required for these documents. As explained in *Bhatt v. Department of Health Services for State* (2005) 133 Cal.App.4th 923, Evidence Code, section 1280 "permits the court to admit an official record or report without necessarily requiring a witness to testify as to its identity and mode of preparation if the court takes judicial notice or if sufficient independent evidence shows that the record or report was prepared in such a manner as to assure its trustworthiness. [Citations.]" (*Id.* at p. 929 [also noting the object of this hearsay exception "is to eliminate the calling of each witness involved in preparation of the record and substitute the record of the transaction instead."]), citing *People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1477 and *People v. George* (1994) 30 Cal.App.4th 262, 274.)

The Court may also take judicial notice of the conclusions reached by other courts in relevant related decisions, pursuant to Evid. Code, § 452(d). (*See People v. Tolbert* (1986) 176 Cal.App.3d 685, 690 ["Ordinarily a court may notice the existence of another court's findings of fact and conclusions of law in support of a judgment, because they are conclusive and uncontrovertible in character and not reasonably subject to

dispute”].) Under this rule of evidence, the Court may take judicial notice of the decisions reached by the trial court, and the reasons for those decisions, as described in Exhibit I, the Rulings on Submitted Matter attached to the *Atherton II* Final Judgment.

Accordingly, the Court may take judicial notice of the truth of the acts, conditions, and events described in Exhibits A through J, pursuant to Evidence Code sections 1280 and 452(d).

III.

CONCLUSION

For the reasons stated above, Amici respectfully request that this Court take judicial notice of the foregoing documents pursuant to Evidence Code sections 452, 459, and 1280.

Dated: May 28, 2015

Respectfully submitted,



Jason W. Holder
Attorney for Madera County Farm Bureau
and Merced County Farm Bureau

DECLARATION OF JASON W. HOLDER

I, Jason W. Holder, declare:

1. I am an attorney licensed to practice before all of the Courts of the State of California. I am an attorney with Holder Law Group, counsel for Proposed Amici Curiae Madera County Farm Bureau and Merced County Farm Bureau (collectively, “Amici”) in the captioned matter.

2. I have personal knowledge of the matters stated herein. If called as a witness, I could and would competently testify to the facts in this declaration.

3. I previously represented Amici in litigation, brought pursuant to the California Environmental Quality Act (“CEQA”) challenging the Environmental Impact Report/Environmental Impact Statement for the Merced to Fresno Section (“M-F Section”) of the California High-Speed Rail Project (the “HSR Project”), Sacramento County Superior Court, Case No. 34-2012-80001165-CU-WM-GDS.

4. Attached hereto, incorporated herein by reference and marked as exhibits are true and accurate copies of the following documents (as defined in the accompanying Motion for Judicial Notice):

Exhibit A: Excerpts from Statewide PEIR/S;

Exhibit B: Resolution HSRA# 05-01;

Exhibit C: Authority Staff Memorandum regarding deferring analysis of wye alignments.

Exhibit D: Resolution HSRA# 11-19, directing staff to defer analysis of wye alignments;

Exhibit E: Excerpts from M-F EIR/S;

Exhibit F: Resolution HSRA# 12-19;

Exhibit G: Resolution HSRA# 12-20;

Exhibit H: Record Certification;

Exhibit I: Final Judgment in the *Atherton II*; and

Exhibit J: STB Decision.

Sole modification: For the Court’s convenience, I have highlighted relevant text within the above documents.

5. Exhibits A through G are documents or portions of documents included in the administrative record of proceedings (“Record”), as certified by the Authority and lodged with the Sacramento County Superior Court in the case referenced in Paragraph 3, above. Exhibit H is the certification for that Record lodged with the trial court. I have a complete copy of the certified Record.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Subscribed this 28th day of May, 2015 at Oakland, California.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line extending to the right.

Jason W. Holder,
Declarant

[Proposed]

ORDER TAKING JUDICIAL NOTICE

Good cause appearing, IT IS HEREBY ORDERED that the Motion Requesting Judicial Notice (“Motion”) by Amici Madera County Farm Bureau and Merced County Farm Bureau is granted. IT IS ORDERED that this Court shall take judicial notice of the following documents attached to the Motion:

- Exhibit A: Excerpts from Statewide PEIR/S;
- Exhibit B: Resolution HSRA# 05-01;
- Exhibit C: Authority Staff Memorandum regarding deferring analysis of wye alignments.
- Exhibit D: Resolution HSRA# 11-19, directing staff to defer analysis of wye alignments;
- Exhibit E: Excerpts from M-F EIR/S;
- Exhibit F: Resolution HSRA# 12-19;
- Exhibit G: Resolution HSRA# 12-20;
- Exhibit H: Record Certification;
- Exhibit I: Final Judgment in the *Atherton II*; and
- Exhibit J: STB Decision.

The above evidence shall be considered by the Court when deciding the three issues presented in the present appeal.

Dated: _____

Chief Justice

PROOF OF SERVICE

Friends of the Eel River v. North Coast Railroad Authority, et al.

Supreme Court of California

Case No. S222472

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 339 15th Street, Suite 202, Oakland, CA 94612.

On May 29, 2015, I served true copies of the following document(s) described as:

MOTION REQUESTING JUDICIAL NOTICE BY MADERA COUNTY FARM BUREAU AND MERCED COUNTY FARM BUREAU; DECLARATION OF JASON W. HOLDER; PROPOSED ORDER

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Holder Law Group's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 29, 2015, at Oakland, California.

By



Jason W. Holder

SERVICE LIST

Friends of the Eel River v. North Coast Railroad Authority, et al.
Supreme Court of California
Case No. S2224 72

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