

Senate Transportation & Housing Committee

Informational Hearing on the Audit of California High Speed Rail Authority

May 11, 2010

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This is a fairly complete transcript. Most text is verbatim or close to verbatim. Use the video link to verify before quoting passages where exact accuracy matters.

Senate Hearing Video: <https://www.calchannel.com/channel/viewVideo/1372>

Supporting documents:

CHSRA Audit files: <http://www.bsa.ca.gov/reports/agency/160>

CHSRA Audit Fact Sheet: <http://www.bsa.ca.gov/pdfs/factsheets/2009-106.pdf>

CHSRA Audit Summary: <http://www.bsa.ca.gov/reports/summary/2009-106>

Full Report: <http://www.bsa.ca.gov/pdfs/reports/2009-106.pdf>

Committee Opening Comments

Committee Chairman Senator Alan Lowenthal intro: Today is the 7th hearing which has been held by the Senate Transportation and Housing committee we're having on the CA High Speed Rail Authority. We began in December of 2007. We're now talking about almost 3 years. This hearing is the result of a request that Senate Huff and I made to the Joint Audit Committee to have the State Bureau conduct a performance audit of the CHSRA. Ms. Elaine Howle, State Auditor, will present the audit today, and a representative of the Authority will present the agency's view of the audit.

Let me begin by saying that anybody who has read this audit report, has been briefed on it, I went through it last night -- cannot help to be disheartened by the authority's mismanagement -- or at least some folks mismanagement -- of scarce public resources. The litany of poor management practices by the HSRA is actually astounding: paying undocumented invoices, asking consultants to work outside the terms of their contract, inappropriately buying furniture for a contractor, lack of mgmt systems, and then when procedures were adopted, failure to implement. And many more findings that were disturbing.

It's kind of interesting to think about -- before I came to the legislature I was a faculty member at Cal State Long Beach and I actually oversaw and did a number of grants and projects, some of those with the state of CA where I applied for these grants and my students and other faculty members worked on them. The state would never have allowed us to do what the HSRA is doing. I mean, we watched to make sure we documented everything the state came down and asked for. It's kind of interesting how when it's ourselves -- when it's the state that's doing the work -- at least an agency of the state -- that we don't engage in same processes that we ask others to do.

In addition to weak management practices, the audit underscores the fact that the authority's financing plan is unrealistic in the sense that how do we know that this money will exist. It relies on at least \$15B of federal funds and expects local governments will contribute \$4.4B, and expects \$11B of private funds, but it never lays out any scenarios if that money doesn't occur. And where – it just says it's going to be there. We don't know if it is or it's not, and we don't know if those scenarios and what corridors will or will not be impacted by the availability of these funds.

And the audit concludes that there's no basis in all of these assumptions and it recommends that the authority prepare alternative funding scenarios that reflect the possibility of reduced or delayed funding.

The program findings of the audit are consistent with the findings of our previous oversight hearings with this committee and that is that whether we're talking about the bus plan or now this audit, the HSRA does not really have at this point a coherent program and needs on desperately. I think the title of the audit summarizes the problems that the legislature must address. "The HSRA: it risks delays of an incomplete system because of inadequate planning, weak oversight, and lax contract management". Before we ask our first witness, Ms. Howle, the State Auditor, to present her findings, I'd like to ask Sen Huff if you'd like to make an opening comment, and then Sen Simitian.

4:35 Senator Huff: Yes, Sen Lowenthal and I asked for this audit not because we wanted to spank the authority but that we wanted to make sure there were good guidelines in place and that we were starting off on the right direction as we embark on the largest public works project in the state. And the audit report did contain information that is of concern to us. We can look at this as going into the doctor's office and getting the right prescription so that we can get healthy and not get worse, because that certainly was the extent of the audit. I know that just the term 'audit' triggers a negative response in anybody, particularly those who are being audited, but we are all supportive of the HSR; we want it to be successful and that really is the whole purpose of the audit and this meeting. I hope it's kept in context. There were some material findings here which we'll go through, but the HSRA has also been acting on these even as the audit was going on and afterwards. It was gathered several months ago, so it's not as though this is current practice and we hope to see an improvement and we hope that this will support some of the committee's concerns and also some of the auditor's concerns. So appreciate the work you've done and look forward to hearing it. Thank you. Mr. Chairman.

6:00 Senator Simitian: I share the concerns you've already expressed, Mr. Chairman and Vice Chairman Huff as well, so I won't belabor or repeat them. I do want to say this: I think we're at a place now where the concerns that have been expressed by individuals, interest groups around the state, certainly constituents in various parts of the state, have now been – legitimized –that's the best word, by both the legislative analyst's report and the audit. And my hope would be that at this point folks would stop being in denial about the cause for concern and come to the conclusion that if you've got thoughtful, well-intended, constituent concern that is backed by the concern of this committee and the budget sub-committee which you and I sit, Mr. Chairman, which is backed by the LAO, which is backed by the Audit, at some point I think folks really do need to come to grips to the fact that this isn't the case of isolated concern or misguided complaint or rampant NIMBYism – that there are real and legitimate concerns here and they need to be addressed sooner rather than later.

And the only way I can put a handle around this is to say I have consistently described myself as a supporter of HSR, but HSR done right. I've supported HSR from my first days in the legislature 10 years ago, I've supported it at every opportunity since, I voted against a 4 year delay in placing the measure on

the ballot in spite of considerable constituent concern in my district. So I think I need to call myself a supporter of HSR done right. We are getting very close to the point where if there are not significant changes and improvements in the way business is done, I will no longer be able to call myself a supporter of HSR done right. And once members start to back away that way, individual members, more than a few, it puts the project in great jeopardy. So I think time is very short indeed and we're getting pretty quickly to the point where if the acknowledgement isn't real and more importantly the corrective steps aren't real and dramatic, I think the project puts itself into jeopardy.

State Auditor's Report

8:40

State Auditor Elaine Howle, accompanied by Jim Sandberg-Larson, the project manager: stepped through the findings. *[In the interest of conserving my time and making this transcript available ASAP, I refer you to the audit links at the top of this document since Ms. Howle simply reiterates the findings from the audit report.]*

Questions to the State Auditor

35:40

Lowenthal: The first general area that just strikes me is the whole area around this program manager. I do realize that the authority and the board had few resources early on to hire their own staff, and they've been ramping up. So they paid the largest single contract – almost \$200M – to have a program manager oversee all the contracts. And as you pointed out in your report, there were some serious deficiencies in what the pm paid, what wasn't paid, and documentation. And so my first question is, is there any way that the state or the authority can recover some of the money they paid to the program manager for the obvious fact that they paid for bills that they weren't supposed to. Should we be paying for that? Isn't that an obvious part of what the pgm mgr was supposed to do? And you pointed out that they just didn't do it. And then you said they actually put into place controls which they never followed. Why are we paying for that? Why is the Authority paying for that? And should they be paying that program manager?

Howle: Well, I think going forward certainly the authority needs to make sure that they're satisfied with what they're seeing of their pgm mgr, and the program manager needs to provide much more evidence than we were seeing for paying the invoices to these regional contractors. Now whether or not the authority can go back and tell the PM "we weren't satisfied with your performance" and try to recoup any payments made --

Lowenthal: But shouldn't we say to them we are not satisfied with your performance. You were expected to do this, you put into place controls – you never followed your own controls. And, the next question is, -- they never received reports from the program manager – it just seems to me there should be some general dissatisfaction with this program manager and what they've done. And that some leverage should be made by the Authority to the management saying this is totally unacceptable.

Howle: Well, Senator, I would agree. I want to make a distinction that the program manager is required to provide those monthly progress reports and the evidence we saw is they were very poorly done. They were inconsistent, they were inaccurate – I absolutely agree that the authority should and has the ability to let that program manager be aware that at this point in time we're not satisfied with the performance we're seeing and this is what the expectation is from this day forward.

Lowenthal: If they don't meet that, are these grounds for ending this contract?

Senator Ashburn: In the original contract, was there provision along the lines of what Sen. Lowenthal is suggesting that if the benchmarks are not met accurately, consistently, that there would be an opportunity, some mechanism for adjusting the compensation to the program manager under the contract to recoup those funds?

Howle: We'd have to go back, and we have a copy of the contract. We could look at – traditionally when you have a contract, you have a termination clause – usually that's for not being satisfied with the service that's provided.

Ashburn: How about errors and omissions? So you would be willing to go back and take a look.

Howle: We have the contract in our working papers as evidence, so we could go back and look at that certainly, or you could ask the Authority – either way. But I would assume that this contract, like any you'd expect to see in a contract, would include reasons for termination and lack of performance or unsatisfactory performance – I don't know the specifics of what that termination clause says. But if there's an interest in looking back, the authority could certainly ask the program manager and say, "here is some evidence that the state auditor identified, we need you to go back to these regional contractors – we want to be convinced that what we paid for, we want to see some deliverables or some kind of progress report that says what we paid for with these various invoices." And that's something that I think is reasonable.

40:30 Lowenthal: You sampled 22 invoices and of those you found that 20 were deficient in the documentation. This is just a small sample. Does this indicate that you should be looking at all the invoices now? Over 90% of the invoices where there's no documentation. Money was paid without knowing whether the job was completed, what was done, the quality of the work, nobody signed off on it, they just paid the invoices. Shouldn't we be looking at everything now?

Howle: That's what you have the program manager for – they should be reviewing these invoices, providing written assurance; that's the control they put in place. But I would agree with you: when you sample 22 invoices and you have concerns about 20, that's huge. Usually you would expect an error rate that's very, very small. That was a major concern. Now we could have selected more invoices, but we were convinced at that point in time, when looking at 22 invoices and you have 20 that are problematic, that you have an issue – a reportable issue. So the portion of that particular finding that's most disappointing to us is that they put a control in place which we think was workable and would provide assurance – the written notification, the expectation on the authority's part – that the program manager is making sure that "I received an invoice from this contractor for this type of work, I've seen the evidence either in the form of a deliverable or some type of progress report from that regional contractor that that work has completed, then it's okay to pay."

Lowenthal: Right. The part that's shocking to me – and now I'll talk about something besides the program manager, is that the authority found – possibly because of this, or maybe because of other data that was coming in in terms of the progress reports, the relationship between the new board and the program manager – that things were not done right. It seemed like they had lost – as you had lost – some confidence in the program manager and rather than setting standards or getting rid of the program manager, they hired somebody else overlooking – oversight. So rather than deal with the problem, we've now hired somebody else, another expense rather than dealing with the issue. So I'm just not sure yet that they have really dealt with the issue at hand, and that is the adequacy and

whether they're getting a product from this program manager that really reflects this huge contract that they're receiving.

43:13 Ashburn: We've just had the announcement of a new CEO, it appears that the qualifications of this individual are very high, so obviously we all have high expectations, so the question would be to the auditor: are there mechanisms in place for the authority through its new CEO and obviously the board, to take a look at both that program manager contract and the subsequent contract for the overseeing of the program manager, for modification, termination, is there a term on those contracts, or does the board possess the authority and its new leader of the staff to look at those for a new beginning. New standards, new deliverables, new timelines. And then my second question would be what, in your opinion, if you have one, is a reasonable period of time for this new staff leader to get on the ground, take a look at what's there, to get a feel, and then – obviously an individual deserves a period of time to get the lay of the land before we expect some strong recommendations back.

Howle: With regard to your first question, with any contract, you have the ability to amend or modify that contract. You would also have the ability to terminate a contract for a variety of reasons. As far as the oversight contract, the consultant that was hired in January of 2010 [Ogilvy], staff informed me that that contract goes through June of 2013. It's an \$8M contract for that consultant to provide oversight over the program manager. Now the program manager's contract, it's a \$199M contract, and it started in November of 2006 and that term expires in June, 2013. But again, you can go into a contract and certainly amend, modify.

As far as the amount of time this executive director would need, boy, that's a difficult question. There's certainly got to be – taking over an organization you'd need a few months to understand everything that's happening, everything that's going on, folks who are reporting to you. It is true that the staff for the authority – it's a relatively small group of staff at this point – 9 ½ staff positions at the moment – I know in the Governor's budget they proposed 27 additional positions – so the new director will need a few months to really get up to speed on everything that's been happening.

46:40 Simitian: The process and oversight issues raised are important, but they are for me not the most important set of issues of concern. The audit speaks to – and we've certainly discussed before – concerns about the business plan, a long-term financial plan, community engagement issues, the revenue guarantees that you described here and have been raised previously. To follow up on Sen Ashburn's question, the question I have for myself and I could use your guidance on – and I understand it's an opinion and I'm going to ask the same question of the folks at the Authority – I mentioned earlier that at some point my willingness to be a quote “qualified supporter of HSR” or “for HSR done right” runs out if we can't get these problems addressed satisfactorily. Again, for me, business plan, financial plan, community engagement, guarantee issues are key to that. Trying to find a shred of good news here: the good news is these issues have now been raised, they've been raised in more than one form, and they've been raised on a number of occasions. What is a reasonable period of time - not for a new exec to come in and get administrative procedures ship-shape, but for us to expect that these issues get addressed. Because long term, going forward, the absence of that business plan, the absence of that financial plan, absent a successful model for community engagement, a guarantee which does not run afoul of the requirements of the bond measure, at some point you have to just walk away and say “I'm sorry, we couldn't get it done”. What's a reasonable period of time for those adjustments to be made?

48:34 Howle: A lot of progress needs to be made in the next 6 months. And the reason I say that is because of some of the requirements as I mentioned in my presentation, they have to have a financing

plan established by the spring of 2011 to meet some of the federal requirements to be able to obligate those funds by the fall of 2011. So we're at May of 2010, having a plan in place less than a year from now, I would presume, and again, it's my opinion, that you're going to need to see some pretty significant progress in the next 6 months or so. They're expecting to have their strategic plan completed, they're expecting to have the other info I was talking about that was supposed to be done last month. So the milestones that they have laid out for themselves, I would expect that they would be met as opposed to saying that we need another 3 months.

Simitian: We'll be in session for the rest of this year. We'll come back next year with a new legislature sworn in, we'll get ourselves organized, middle of January next year, 2011, at that point in your view, the folks who are at the helm of the authority ought to be able to give us a business plan, a financial plan, a community engagement plan and a resolution on this issue of a guarantee that is satisfactory given the fact that it has been called out and they understand clearly what the task is before them. Is that a fair recitation of what I've heard?

Howle: I think that's a fair recitation. Specifically when they're so focused on federal dollars, and as I indicated, some of the planning and what the federal government is expecting to see in 2011, so I think your characterization is fair.

Simitian: I'm going to be asking the Authority if they're going to be willing and able to make the commitment to make drastic measurements in this time. As we've said at prior hearings, it feels to me we have drag this information and improvement out of the authority in painful increments one after another after another rather than saying we're going to get it done right and so forth.

51:00 Lowenthal: To follow up on Sen Simitian as he's moved away from some of the controls to some of the harder issues around the financing plan, and the inadequacy you found in the business plan, I want to ask you, part of the way the authority was to deal with these – to have a financing plan – was to have a peer review to come in and look at that financing plan. And you've said they only have 5 members selected of that peer review committee and they've had some meetings or some input. Have they made any independent assessments of this financing plan? Have they done anything with the peer review committee?

Jim Sandberg-Larson (auditor): We're not aware of that. The authority did say that they were sent copies but they didn't receive any feedback.

Lowenthal: So they never really tried to convene this or to meet with them in any way? Because part of the data that the legislature needs to look at, aside from the LAO and the Auditor, is this peer review committee which is to look at this financing plan and come back with recommendations to the policy committee and also to the budget committee and to the authority itself. So I am wondering what recommendations that were called for in AB 3034 to set up peer review -- Do we need to strengthen that? Because you do highlight some of the problems of not having a real peer review. We talked about having a finance committee; we don't have that peer review to give it. What can we do in the Legislature to ensure that there is a functioning peer review committee of the plans that we keep saying to the authority we need more information on.

Jim: at that time they didn't have a quorum of their members. First in December 2009, I believe at that time they had three members. So there are issues as far as having a complete committee. Now in April they at least have a quorum of members. And there were indications from the Treasurer, the Controller, BT&H, that they were going to select the additional members.

Lowenthal: And will those members, will the peer review committee be making set timeframes regarding the financing plan, and the business plan, as they were supposed to be doing?

Jim: I'm not aware of that. They are supposed to look at the Authority's plans in general; they are supposed to look at funding plans for these corridors specifically.

Lowenthal: Which you said we don't see.

Jim: That's a somewhat different issue; this was the financial plan for the entire program; it also speaks to funding plans for corridors, and how those are financed.

Lowenthal: But you also indicated that you have real concerns that we're not really looking at those corridors – that there may not be funding right now for even one of those corridors, let alone saying that all 6. We need some input in terms of the adequacy of the funding for those corridors. Is the Authority able to make some decision in terms of where they spend the money? It's supposed to be reviewed and then those recommendations are supposed to come back to the legislature, and what we're hearing is that that process is just now being set up. What I'm saying is I want to know clearly what that peer review committee is going to be doing and whether they'll be making recommendations also. It's critical to us to have that data, too.

55:00 Howle: Right. One of the suggestions has been, as Jim indicated they now have 5 members, and when we spoke with someone at the Treasurer's office and they were actively trying to identify – you know, the Treasurer, the Controller, BT&H – but they have enough to satisfy a quorum that that body could meet. And the suggestion may be to have the Authority establish a timeline or a plan for this peer review group to look at their financial plans for each of the corridors and report that back to the legislature. So you could set up certain milestones and say that you want the peer review group to look at the business plan for these 3 corridors, or all 6 corridors by a certain date.

Simitian: The qualifications for the 3 remaining individuals are what?

Howle: I don't know off the top of my head. If you go to page 26 of the Auditor's Report you'll see a textbox in the left hand column and it indicates the types of experience and who the appointing authority is and what they're looking for.

Simitian: So if we have some qualified talent in our districts, this might be the time to point them to those individuals.

Lowenthal: One other question I have is not really covered by the audit but it was something that Sen Simitian touched on – what we have been hearing, if I might summarize: besides the real concerns that we've had about the business plan, and the financing plan that lead to the request for help from the state auditor, the other issue that we commonly hear, and I'm not sure you can even answer this. The decision making process that the Authority engages in seems to be one in which the community, in terms of community engagement, perceives as a top-down model: decisions are made, they go into communities, and what we end up hearing is people up in arms. That's all we hear. We hear from people in Anaheim to LA, all those cities, or the Peninsula, all those cities feeling like they are not listened to. In any way did you hear any of that at all or is that really beyond the scope, because that is something that is the other issue that we have heard and that is that somehow the project manager was supposed to

manage also the communications between the authority and the communities – it's perceived out there anyway the project manager is telling people what they're going to get or not get. Whether that's true or not, we just hear that. And so we're wondering whether you heard some of those same concerns at all.

Jim: No.

Huff: When you were sampling those 22 invoices, did you use some general accounting principles – did you follow some sort of standard for what percentage of invoices you took a look at?

Jim: We looked at the dollar values that were paid to the various contractors during that period and we allocated the [] that had been paid to the various contractors. So that was pretty much the basis.

Huff: So representative percents to the value of payment?

Jim: Right.

Huff: What percentage would that be?

Jim: It was in the low 20%.

1:00:00 Huff: As far as quantity of invoices, any idea of what percentage that might be – total number of invoices?

Jim: It was probably in the low teens. We did focus on higher value invoices.

Huff: How many of those were from the program manager, do you recall?

Jim: We had 8.

Howle: We had 30 total – 22 were the regional contractors and 8 invoices were for the program manager.

Huff: For the program manager, was there a protocol in place for approving those invoices?

Jim: There is a protocol in place and as far as a person who is assigned to approve those; as far as that person doing much in regards to protecting whether deliverables had been provided, that wasn't there.

Huff: So there was a protocol that was there that was consistently followed – for the program manager invoices?

Jim: There just really isn't much there at all except someone will look at the invoice and check it for its accuracy as far as that the total is correct – that does happen. But as far as whether the deliverables were received related to that invoice, that's not checked.

Huff: Okay. So more of a bookkeeping as opposed to whether it is an appropriate invoice. And on the 22 then, it's been characterized that there's been no documentation. Is that an accurate description?

Jim: no that is not an accurate description. There is documentation as far as direct costs that are charged, as far as time that was spent by individual employees of contractors, that kind of information is there. But as far as documentation on someone checking to make sure they were satisfied the authority had received what it had contracted for, that was not there.

Huff: So that's similar to the program manager – what they didn't do the work, it's that nobody was signing off on the contract. And on the 22 invoices, what was lacking was their program manager's signature saying this is what they were supposed to do.

And then you said there was some that were outside of the contract that wasn't even included. How many did that represent - do you recall?

Jim: I don't know exactly -- we did put the dollar value of what we found that was outside of the contract but we said - \$216,000. It was a relatively small part but we were concerned that they would need to be paid for something where they didn't have an agreement.

Huff: was it furniture or was that a separate issue?

Jim: that was a separate issue.

Huff: That helps put some context into it, then. You mentioned that a standard response according to the audit is 60 days. Is that just a typical response back? Here are findings we did -- what have we done, and then it's six months and then it's one year, correct?

Howle: that's standard practice but we have the ability to modify that if you desire.

Huff: my question to you is, do you think that's adequate for this situation?

Howle: for this situation, because of the high risk and the importance we may need to have them respond more frequently. The thing that my office can and does do on particular high-risk situation, for example some of the recovery act work we've done we've had significant concerns we intend to go back to those agencies within the next few weeks to see where they're at related to audits we issued just two, three months ago at the most. So we could do the same thing here. We could go back into the authority within 60 days and say this control is now being exercised as far as making sure these invoices are being paid after written assurances that the deliverables are there and the work has been done. So we could certainly do that. We could certainly, as I indicated, ask for a response from the authority every couple of months rather than waiting another four months after we get the 60 day response waiting for that six-month response.

Lowenthal: I just have a few more questions to follow up on that. I was looking here at almost the original question I asked. On the report you said the Authority paid contractors more than \$268,000 for services performed outside the contract [mentions furniture contract.] Should they be getting this money back?

Howle: I think the difficulty is that based on oral agreement or some of these outside of the scope they asked the contractors to do this type of work. If the contractor provided this work, I don't know how much. And again, I'm not an attorney, I don't know how much authority the authority would have in saying, we asked you to do something outside the scope of work, we paid you, we want the money back because it

wasn't in the scope. I think the authority needs to be much more cautious if they're going to ask them to do something additional like Sen. Ashburn said then modify the contract. If you feel like you need additional things done by this particular contractor, then let's get a modification as opposed to just asking them to do something that's not within the scope.

1:06:30 Lowenthal: and the last comment-- you brought up that the authorities plans for project financing includes a revenue guarantee that needs further specification, but it's working to improve its approach to managing. You go on to say the Authority's planning consultant has raised concerns with the LAO's office that this guarantee might be a prohibited operating subsidy, however details are lacking. One of the things that this committee is very concerned about has been that we follow the law. And that it was real clear in the bond that there would not be any operating subsidy paid by the state. Do you see some conflict here between this concept of a revenue guarantee and the prohibition on operating subsidies? Because you mention that if in fact that they make additional sums of money if they're above their projection, that's one way, but if they're below then you need a revenue guarantee. That seems to me awfully close to an operating subsidy.

1:07:30 Howle: Well on its face it certainly raises concern. I wouldn't be comfortable opining on whether or not it's appropriate or not. We certainly raised it as something that's been a concern. I think LAO raised it as a concern. We need to get an answer on that.

Lowenthal: We need to know what they're talking about in terms of a revenue guarantee.

Howle: I would agree. And I think that's something that again needs to be resolved relatively soon in the event that there is not an operating surplus and private investors are expecting a revenue guarantee we need to know a determination of whether that's okay and whether or not it's appropriate with respect to the provisions in proposition 1A-- know the answer to that question because if that's going to be a key provision in private investors being willing to participate we need to know the answer to that question.

Lowenthal: I think you were real clear in the fact that there's a potential that the authority could be burning through both the \$900M that they set aside for planning & pre-construction costs, and the money for administrative costs. Again, to reiterate and reinforce what you just said, it's really important that you get a clear understanding and get back to us just how much money has been spent and how much has not. It'd be terrible to spend that money and then find out that we have to now come back and use additional moneys to pay for that because they've already spent it because no one was keeping track of just how much money. So I would encourage you as you follow through to make sure that we get a clearer picture of just what's been spent for pre-construction costs and administrative costs, as you've indicated in the report.

After this great introduction, let's hear from the CHSRA and see what they have to say.

CHSRA Presentation by Carrie Pourvahidi and Jeff Barker.

1:10:00

Carrie Pourvahidi gives a summary report of the CHSRA's position of the audit. *[Again, I've omitted the presentation part of the transcript. Refer to the CHSRA's response letter within the Audit.]*

Questions to the CHSRA

1:25:45

Lowenthal: Well, thank you for that report. It seems that the operative word is: you agree with the auditor's report. I'm still not convinced that agreement means that you'll bring about the changes that are needed; only time will tell. My first question is that you keep talking about the authority -- the board -- that has the authority ever approved business plan - formally?

Carrie: They approved the addendum that was submitted -- --

Lowenthal: I'm talking about the business plan that we received in December. Has it ever been voted on? Can you tell me whether that was agendaized and voted on by the authority?

Barker: When we brought back the addendum it was inclusive of the business plan -- the original business plan was reviewed by the board inclusive of that item.

Lowenthal: was there a vote on this?

Barker: There was a vote to approve the business plan as revised with the addendum.

Lowenthal: When was that?

Barker: That was the April board meeting.

Lowenthal: so the December business plan that you submitted to us was voted on by the board? When we requested that there would be a business plan in place in order to receive the funding, that was voted on by the board?

Barker: December - no it was not.

Lowenthal: I think that's some of the issues that when we talk about the Authority, we're not sure who really speaks for the authority -- whether they've ever voted on these issues. The other question is, and you've heard some of the recommendations of the auditor which you've agreed upon about developing some of the inadequacies and the need for more robust financial plan based upon different levels of funding. Can we expect to see what the auditor is asking for -- that a business plan that includes levels of funding for different corridors and what might be different scenarios if there's not full funding -- what will occur, what will be funded, where there are shortfalls? Can we expect to see that? And when?

1:28:20 Carrie: we currently have a financial advisor on board who is working on putting together funding packages for each of the corridors. It's a scenario, it's not something we can guarantee that we're going to have this much federal funds, we're going to have this much private sector funds --

Lowenthal: -- That's why we want to see the different options.

Carrie: -- we just want to have different scenarios.

Lowenthal: Right. And when would we anticipate seeing that?

Carrie: It really depends on the information we're going to be able to garner from the regional contractors and what's happening in the regional corridors. I can't give you a specific time as to when those numbers will be available.

Lowenthal: You know that it's been identified by the auditor as one of the key recommendations that, for us to see specifically what might be funded, what might not be funded, what the timeframe is, what the priorities are. We have no idea, given the business plan and the financial plan contained within it, really what might or might not occur. We just have this general, "phase 1 will occur, \$42B", but we have no idea now with any of the specifics of what will happen, what are different scenarios, what if federal funding does not occur by 2012 or 2013; are you also anticipating additional state funding? You've never really indicated that or not. We just would like more light shed on that as the auditor has said because we are in the dark about that.

Next question gets back to the more specifics: the program manager has already come – will you be able to assure this committee that all of their work was completed and the payment of all these invoices – not just the ones the auditor has said were incomplete – a lot of money was paid out with incomplete documentation. When will we know specifically whether in fact there is that documentation?

Carrie: Hopefully within the 60 days I'll be able to compile that information with the program manager and provide it as a response to the Bureau of State Audits.

1:31:15 Lowenthal: What's your overall evaluation of the effectiveness and overall work of the program manager?

Carrie: I think they're doing a great job. It's charting new ground for California and the nation in building a high-speed rail project.

Lowenthal: You think they've done great work in paying all these bills without any documentation?

Carrie: I was looking more at what they're doing in the programmatic level as far as managing moving this project forward, getting environmental work done, getting engineering work done --

Lowenthal: how about their communications with the communities?

Carrie: Well as you know that was an issue that we addressed last year by pulling out the communications aspect of their work and bringing it directly into the authority with a direct report to the authority. We felt that there was some missteps that occurred and therefore we pulled it out and we have now a consultant that reports directly to our director of communications.

Lowenthal: if in fact you're not satisfied, or the auditor is not satisfied within the next 60 days that you or your program manager can really provide all the documentation, do you think further action needs to be taken? Can we recoup some of these costs?

Carrie: I believe that we paid for work that was done, I mean it was not work that was not done. [] One of the processes of getting information from the program manager, but as far as the work that was done at the regional level, we have deliverables that were received from the regional contractors.

1:33:00

Simitian: I want to trickle back to the question I asked earlier of the Auditor that I think you indirectly raised just a moment ago, Mr. Chair. Business plan issues, finance plan issues, community engagement

issues, the legality of the guarantee that's been described, peer review issues -- what's a reasonable time to have all those issues squared away?

Carrie: Well, with our new CEO coming on board June 1, it will be up to him as to how -- what time frame they'll be able to respond.

Simitian: No, no. I'm sorry, ma'am, nice try. You've heard from constituents, you've heard from the budget subcommittee, you've heard from the transportation policy committee, you've heard from legislative analyst's office, and you've heard from the auditor. These issues are not new. To your credit you've acknowledged the need for improvement in a number of these areas. The question is, at what point should we throw up our hands and say, "we give up it's not going to happen." Which -- I can't speak for others -- I certainly don't want that day to come, but at some point I'm going to have a hard time believing it's going to get better. So the auditor indicated January 15 was not an unreasonable expectation. It's going to be very hard because at that point we're going to be two years beyond the passage of the bond, it's going to be very hard to say sure, we should keep investing hundreds of millions of dollars, looking towards billions of dollars, if these issues have not been addressed. So my question to you here today, quite purposefully on the record is, is that a reasonable expectation -- January 15? And if you don't want to answer the question today then can you have somebody from your operations commit to get back to us within two weeks as to a date certain by which these issues will be fully and satisfactorily resolved.

Carrie: yes. We will get back to you in two weeks.

1:35:00 Simitian: Okay, if that's your preference, I'm prepared to acknowledge there's a new sheriff in town, but I'm looking then, Mr. Chairman, based on the comments that have just been made, to hear back in two weeks as to by what date it is reasonable for us to expect these issues to be resolved. Again, they are the business plan, financial plan, community engagement, revenue guarantee, and peer review issues that have been raised in this hearing and in previous hearings.

And at some point, I think that we're going to say we can't do it. We have managed thus far, Mr. Chairman, in the budget process to essentially say we're going to authorize the appropriation of funds based on certain pre-conditions, and if those conditions are met we'll move forward. I anticipate that we'll be having a similar conversation sometime in the next few weeks in the Senate budget subcommittee process, but at some point, I think people are going to say we just have to call it a day and toss it in. I hope that day never comes, but that's the question.

And then just one further comment I will raise with respect to the community engagement issue: because the community has struggled so much in my area to get answers to questions, they call our office. And then we call you. And I think we've got 2 out of 3 areas where that's working reasonably well. If we call Sacramento office directly and speak to your staff, we usually can make a connection and have that work. If we call the local contractors and the folks at the local level, that usually works. But if there is a question, often on behalf of a constituent or some interested party, that has to go up the rungs from the local folks to Sacramento back down to the local folks so they can answer it for us, that isn't working. Hasn't been working, isn't working. And given the fact that you've got new help on board for communications purposes, that is a cause for concern. In a perfect world our offices wouldn't be in the position of having to be field these calls, but they are. It's part of our job description if folks can't work with state agencies without an intermediary, then we have to step in and be that intermediary. But

right now we're having trouble getting questions answered if they go up the chain and back down the chain. We're not getting a timely response. Thank you.

1:37:40

Lowenthal: I'd like to make one observation following up on Sen Simitian's comments, and wishing for a clear answer and a sense of frustration that, you know we began to hold hearings on the inadequacies of the business plan in December 2007 and actually had to put it into AB 3034 to require that we have a business plan, but we never got that business plan before the election. It came just – I think it came really 3 days after the election which is not what the legislation asked for. And then only through the budget process by withholding funds were we able to even get that done in December. I think that's a cruel way of doing policy to constantly leverage it. But I will tell you that if that's the only way to do it, we will continue to do that. We *need* this information.

Huff: You made a comment that you felt the program manager did a great job. I think part of our frustration is that the program manager is an excellent company – they certainly have a lot of business, they're one of the few that have the capability of handling a project this size. The frustration is that – yes, it's the first of its kind – but putting in a system of controls for work completed, for knowing it's been done and signing off, is very fundamental for even the smallest business person. That part's frustrating because that's not new – they were hired to oversee this. And that's where our frustrations come in. I think you will find us a lot less pain in the neck once you've got your systems down, and following the procedures and it becomes more routine, and I recognize startups just have built in problems, but hopefully we don't have to reinvent the wheel here for this one.

A couple of quick questions. You mentioned on the alternative funding scenarios that – I think your exact quote was “would not vary in terms of the ratio of state to federal to private funding, it would just lengthen the time and therefore the cost of project.” So you're expecting that what we will do is, when we eventually get enough federal funding that we match with our state funding. You have a fixed amount for each of those – the ratio. But as it gets more expensive, the fare box recovery is going to be more expensive also – unless you're planning another 100 years to recover the costs – so the real thing we're looking for, is there a conservative scenario, a more realistic scenario and a worst-case scenario that we can look at so that we can get some idea of what we're looking at here. Because I think right now you've taken an aggressive, high-ridership model, and we would just like to know that, okay, it may happen, it may not happen, but if it doesn't happen, what are we looking at, so we can try to understand the parameters a little bit better.

And with that I will stipulate that when President Eisenhower envisioned the freeway system, I don't think he knew what the cost was or what was involved. In fact he was thinking about it for military purposes, and including something to land airplanes on. But it served something totally different. We couldn't have the kind of commerce we have without that grid in place, so it was a strategic asset for the nation. I similarly see – without the military connection – the HSR is a fundamental infrastructure for the state. Not for now, much as we'd like it now, but for the future as our state continues to grow and so I see this as something that has to happen, and we may be a little ahead of the curve – I hope not – my hope and expectation is that we can wrestle all these issues to the ground, get our arms on it and then move forward and make this thing happen in a way that's supportable. Anyway, I appreciate this and your coming and responding. That's all I really had.

Public Comment.

1:42:30 to 2:30:00 [*Refer to the [video link](#) for public comments.*]