



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

February 19, 2019

Mr. Brian Kelly (via electronic mail to brian.kelly@hsr.ca.gov)
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, California 95814

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

Dear Mr. Kelly,

This letter provides notice to the California High-Speed Rail Authority (CHSRA) that the Federal Railroad Administration (FRA) intends to terminate Cooperative Agreement No. FR-HSR-0118-12-01-01 (Agreement) effective March 5, 2019. Following termination, FRA also intends to promptly de-obligate the full \$928,620,000 obligated under the Agreement.

FRA has determined that CHSRA has materially failed to comply with the terms of the Agreement and has failed to make reasonable progress on the Project (as defined in the Agreement), significantly endangering substantial performance. Considering this determination, FRA intends to exercise its right to terminate the Agreement, consistent with Section 23 of the Agreement.¹ FRA's determination is based on many factors, including:

- CHSRA's failures relating to required State expenditures necessary to advance the Project according to the Project's schedule.
 - CHSRA has failed to achieve the State contribution rates described in its quarterly Funding Contribution Plan (FCP). For example, CHSRA committed to a \$141.8 million State contribution to advance final design and construction activities in December 2018, but reported only \$47.9 million of actual expenditures in that month. This almost \$100 million difference shows not only CHSRA's inability to deliver State contributions as outlined in the FCP, it is also an example of CHSRA's failure to advance construction work and expend funds at a pace necessary to complete the Project according to its schedule. Other months show the same shortfall of expenditures as compared to the State contribution commitment.

¹ Section 22902(a) of Title 49 (Previously codified at 24402(a) of Title 49) authorizes the Secretary of Transportation to require terms, conditions, and other requirements that the Secretary deems necessary or appropriate on grants awarded under Section 301 of the Passenger Rail Investment and Improvement Act of 2008, which is one of the authorized programs included in the High-Speed Intercity Passenger Rail grant program. Additionally, 49 CFR § 18.43(a), provides the general authority for Federal awarding agencies to terminate awards if the grantee "materially fails to comply with any term of [the] award, whether stated in a Federal statute or regulations, an assurance, a notice of award, or anywhere else."

- Based on CHSRA Board of Directors reports, FRA has determined that CHSRA will not complete the Project by 2022, the end of the Agreement's period of performance.
 - FRA's evaluation of the various documents submitted to FRA, or publicly available (e.g., CHSRA's 4th Quarter 2018 Summary Schedule and CHSRA's February 2019 Finance and Audit Committee reports) shows CHSRA cannot complete the Project by 2022.
 - When compared against the amount of funds expended, the pending contractual completion dates show CHSRA is failing to make the type of sustained progress necessary to meet the 2022 deadline. For example, according to CHSRA's February 2019 Finance and Audit Committee report on Construction Package (CP) 4, the contractor has expended 25.1% of the contract price but approximately 86.5% of contract's period of performance has elapsed, demonstrating that CHSRA is not advancing construction work at the pace necessary to maintain the Project's schedule. Numerous prior quarterly reports reflect the same failure to expend contract dollars consistent with the contract period of performance.
- CHSRA's failure to submit required critical grant deliverables adequate to demonstrate CHSRA is effectively managing delivery of the Project. Such deliverables include Funding Contribution Plans.
 - CHSRA has failed to provide FRA with timely and satisfactory financial reports and other related deliverables. Without these deliverables, CHSRA has not demonstrated that it is making reasonable progress or effectively managing the Project. For example, since 2016, FRA has found over 40 reports and deliverables are delinquent or do not contain the type of information or level of detail necessary to allow FRA to oversee CHSRA's performance of the Project; this represents a very large portion of the reports and deliverables due over that timeframe. A portion of these delinquent or unsatisfactory deliverables are also required by Cooperative Agreement No. FR-HSR-0009-10-01-06; however, they generally show CHSRA's repeated failure to meet its obligations to FRA.
- Based on findings from FRA's oversight and monitoring, CHSRA has failed to take the appropriate corrective actions to ensure delivery of the Project.
 - FRA has regularly communicated its concerns on the above issues to CHSRA through: routine monitoring with CHSRA staff; individual meetings with CHSRA leadership; Quarterly Executive Meetings; and feedback on the Authority's reports and deliverables as part of FRA's routine business practice. CHSRA has consistently failed to take the appropriate corrective actions.

- FRA identified areas of interest in the 2017 annual monitoring (e.g., failure to develop and submit to FRA realistic Project schedules and budgets based on past performance and trends). During its most recent November 2018 monitoring, FRA found that CHSRA failed to satisfactorily address those areas of interest.

Reinforcing FRA's concerns about CHSRA's past performance, and the likelihood CHSRA will deliver on its obligations, is the significant change in the State of California's plans for its high-speed rail system. As described in the Agreement and in the various CHSRA applications for Federal financial assistance, the Project is a component part of the larger high-speed rail system that would, ultimately, connect San Francisco in the north and Los Angeles and Anaheim in the south. During his recent State-of-the-State address, Governor Newsom presented a new proposal that represents a significant retreat from the State's initial vision and commitment and frustrates the purpose for which Federal funding was awarded (i.e., an initial investment in the larger high-speed rail system).

If you believe there is information showing that: (1) CHSRA has satisfied its commitments and obligations under the Agreement; (2) is making reasonable progress to deliver the Project; and (3) that the Governor's announcement does not constitute a fundamental change in the purpose of the overall project for which Federal funding was awarded, FRA will take that information into consideration prior to taking any final action regarding termination of the Agreement. You may submit any such information before March 5, 2019, to Ms. Jamie Rennert, FRA's Director of Program Delivery at jamie.rennert@dot.gov.

FRA reserves its rights under all other grant or cooperative agreements with CHSRA and is exploring all available legal options, including termination of Cooperative Agreement No. FR-HSR-0009-10-01-06 and the recovery of the Federal funds expended under that Cooperative Agreement.

Sincerely,



Ronald L. Batory
Administrator

By e-mail to: brian.kelly@hsr.ca.gov

cc: The Honorable Gavin Newsom
Governor
State of California

The Honorable Brian C. Annis
Secretary
California State Transportation Agency