

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

INTER-OFFICE COMMUNICATION

TO: Board of Directors

DATE: December 15, 2009

FROM: General Manager

SUBJECT: CTA Litigation Update

As you are aware, last year the California Transit Association (CTA) sued the State of California to restore the nearly \$1.2 billion in funds that were diverted away in '07 –'08 from the Public Transportation Account. CTA, on behalf of BART and other member transit agencies, won the case at the state Supreme Court level which stipulated that the diversions of the funds subject to the lawsuit are illegal.

As part of the CTA strategy resulting from the case, the CTA Executive Committee appointed a subcommittee to oversee settlement negotiations arising from the lawsuit in response to diversions of transit-dedicated state funding, and began initial discussions with Department of Finance Director Mike Genest and key legislative staff. The negotiation process will likely continue in order to pursue a fair and practical outcome.

Some good news this week occurred which will provide solid support and leverage for these continued negotiations. On Monday, the Superior Court of California issued a ruling ("Judgment After Remittitur") that agrees with the Supreme Court's decision, declaring that the state must make arrangements to restore the \$1.19 billion raided in the 07-08 budget. Josh Shaw, Executive Director of CTA, says this judgment primarily serves as a legal guide for ultimate resolution of the case and, in practical terms, the final settlement is still subject to negotiations between the Association and state officials.

In the meantime, the CTA legal team, and the Association subcommittee have developed, and the full Executive Committee has approved, strategy recommendations to guide negotiations which include the following "Aim High" initial goals:

FY 2009-10 – Good Faith Transit Funding Restoration

Allocate 100% of accumulated Spillover funds to a restored STA Program.

FY 2010-11 – Three Transit Funding Components Restored

1. Restore PTA base funding (Sales tax on diesel, Prop. 111 sales tax, and Prop. 42 sales tax) to legitimate expenditures, consistent with the lawsuit's definition of legal public transit expenditures, so there is a predictable and stable STA Program available for transit operations, and some funds are available for state and regional programming priorities, including needed commuter and intercity rail funds.

2. Allocate Spillover funds to both the PTA and to eligible General Fund (GF) relief (within confines of legitimate uses defined in lawsuit), for some period of time. Over time, provide increasingly more Spillover funds back to transit, and increasingly fewer Spillover funds to GF relief. Of the funds allocated to traditional PTA expenditures, ensure some level of STA Program funding.

3. Provide a repayment plan, such that the debt owed by the GF from 2007-08 and 2008-09 Spillover diversions is appropriated over some number of years to the PTA, and allocated for legitimate transit expenditures.

This week's judgment certainly continues the trend of legal rulings in our favor, but the final outcome is yet to be determined. We will keep you informed of any developments.

Signed Original on File

Dorothy W. Dugger

cc: Board Appointed Officers
Deputy General Manager
Executive Staff