

## **Kole Upton Written Testimony**

### **Opening Comment**

If the High Speed Rail project is to be started in the Central Valley, the finished product should be compatible with the existing infrastructure that sustains the economic vitality of this area. This means the High Speed Rail project must be compatible with the agricultural industry and its associated infrastructure.

Regrettably, to date, this is not the case. Rather than use existing corridors to minimize impacts on farmland as promised in both the implementing language and the supporting bond measure, most of the proposed routes go through prime agricultural land. This results in the destruction of both the farms and their supporting infrastructure.

The supporting infrastructure includes wells, canal pumps, SCADA (Supervisor Control and Data Acquisition) systems, weirs, transfer facilities, micro systems, pipelines, and numerous other capital improvements that allow our farmers to be among the most water efficient and highest per acre producers in the world.

High Speed Rail proponents claim that the 100 foot path through the farm land will be the only effect. Nothing could be further from the truth. In fact, CHSRA's own document indicates a ½ mile (2,640 feet) indirect biological impact when routes go through farmland (attachment 1). Plus, many of these proposed routes go through at an angle further destroying or rendering the land not farmable. So, it is obvious that the impact will be up to 25 times more devastating than indicated in the press releases.

Jobs are a big issue in this society. What is being missed regarding this project is the number of jobs that will be lost due to the project's impact on the agricultural industry. For every on the farm job lost, up to ten additional off the farm jobs will be lost as well. As the farm product moves through the food chain to the consumer, it is shipped several times, processed, marketed, advertised, and sold to the consumer. All these activities and the associated jobs are forfeited if there is no product coming off the farm.

Our family's farm is typical of a Central Valley farm. Our long term employees have health insurance and own their own homes. This project promises thousands of temporary construction jobs, and some permanent jobs. If this project is constructed without regard to the detrimental effects on the current economic infrastructure, thousands of long term good paying jobs will be lost.

If built, this project should be integrated seamlessly in to the Central Valley's current infrastructure as effectively as possible. This would result in the maximum number of jobs created and saved.

Another option would be to use the money for projects here in the Central Valley that would provide immediate benefit to the area, and be compatible with our existing infrastructure. The construction workers wanting jobs are not saying the only jobs acceptable to them are ones building High Speed Rail.

Perhaps, we should use the money now for needed infrastructure improvements and defer High Speed Rail until our fiscal house is in order?

### **History**

My testimony will focus on my involvement with this project. My experience is similar to hundreds of other farmers up and down the San Joaquin Valley. This is the reason a group of us started the organization Preserve Our Heritage. Other grass roots organizations have also sprung up in other areas of the valley.

My family first received notice by mail that our land was being considered as a potential route in November of 2009. It was part of a route called A3 which traveled primarily through farmland for about 24 miles from Madera County into Merced County. This was the first contact many of us had with the California High Speed Rail Authority (CHSRA).

In retrospect, CHSRA's prior outreach to the Central Valley was almost wholly with cities and counties. Public and private agricultural interests such as farm bureaus and water districts were not effectively brought in to the process.

A group of us traveled to Sacramento for the next 2009 CHSRA Board meeting. After expressing our concern that the A3 route grossly violated the principles of using existing corridors to minimize impacts to farmland, the then Chairman (Mr. Curt Pringle) suggested we 'roll up our sleeves' and participate in the process. I thought that was good advice and many of us have participated ever since. This includes attending the open houses and other events supposedly designed to receive input from the public.

As an elected official on two water districts (Chowchilla Water District and LeGrand-Athlone Water District), I requested permission to be part of the Technical Committees for Merced and Madera Counties. These committees consisted of publicly elected officials but previously had only been open to city and county elected officials.

After several months of intense activity by farmers, their related organizations, and sympathetic county supervisors, A3 was removed from consideration in March of 2010. Many of us breathed easier, confident that the process had worked effectively.

In June of 2010, I attended a Technical Meeting in Merced, CA. Since the area in southern Merced County and northern Madera County is considered the 'Wye' section of the project, it is part of the Merced to Fresno study section, as well as the Merced to San Jose section. Therefore, both consulting groups were present for this meeting.

During this meeting, I asked the question whether any public agency with jurisdiction in the area supported the 'Wye' being north of the City of Chowchilla. Unanimously, none did.

In July of 2010, CHSRA announced a new potential route called the West Chowchilla Bypass Option (WCBO). Later, it was called the West Chowchilla Design Option, and was recently renamed again as part of the 'Hybrid' route. This route was north of the City of Chowchilla. This and other bizarre decisions in our area led to the formation of our group, Preserve Our Heritage.

Other members of Preserve Our Heritage had similar experiences with potential routes along Avenues 21 and 24 in Madera County, and the A1 route in Madera and Merced Counties. At one time, there were 27 possible routes through the 'Wye' section. In my view if a person in this area was not potentially affected by a proposed High Speed Rail route, he or she would have grounds for a discrimination lawsuit.

My question was why did the Authority pick a potential route (the WCBO) that was clearly opposed by every public agency with jurisdiction in the area? The answer was that it was to please the City of Chowchilla. However, the City of Chowchilla quickly denied asking for such a route, and is still actively opposing it.

Later, I was told the route was demanded by the Federal Railroad Administration (FRA). I requested documentation, but have received none. Thus, the Chowchilla Water District sent a FOIA request to the FRA on Dec. 2, 2010 (attachments 2 & 3). To date, despite the best efforts of Congressmen Denham and Cardoza, FRA has refused to respond.

During my effort to protest this route, CHSRA consultants spread the rumor that I should be ignored because the route did not go through my land. A simple review of county assessor maps quickly exposed that canard, and I received a written apology from the Regional Director.

### **The Heavy Maintenance Facility (HMF) Lottery**

I would be remiss in not mentioning CHSRA's approach to selecting the location for the HMF. This facility is being dangled in front of many communities up and down the Central Valley. However, only one will be chosen. Nevertheless, you have some officials from these various areas apparently supporting this project convinced that their location will be chosen. They cannot all be right.

One of the proposed HMF's is next to my farm. The original proposal contained part of my family's farm and was to be submitted without my knowledge or consent. The proposal was offered by a public official with no jurisdiction in the area and without the knowledge or consent of the local county supervisor. Our farm was excised out of the proposal when I protested, but it would still be hugely affected by the required infrastructure to support the HMF.

In that one of the other landowners has also withdrawn his approval for the HMF, we are told it will eventually be eliminated even though it currently remains on the HMF list. This experience and others like it do not inspire confidence in the integrity of the consultants or staff of CHSRA in the treatment of Central Valley citizens.

### **Will of the People**

Due to mounting opposition in the Bay Area several years ago, FRA and CHSRA shifted the initial construction to the Central Valley. One of the supposed factors for this decision was the 'overwhelming support' for the project in the Central Valley. Unfortunately, only a few people in the Valley

had been contacted and most had no concept of the effect of the project on their lives.

As Valley citizens began to realize the devastating effects of some of the proposed routes, concern and outright opposition have become rampant. If you travel outside the narrow boundaries of the City of Fresno either north or south, you will find that the vast majority of Valley citizens now oppose this project.

We are told elections have consequences. I suggest you look at the off year elections in the Valley where High Speed Rail was an issue. Further, the upcoming 2012 Valley elections will involve High Speed Rail as one of the primary issues. Hear what the people say.

In addition, there is great concern about the adverse effects of HSR on local water districts and their ability to effectively service their constituents. Several have already passed resolutions opposing the project, the most recent being the Madera Ranch Oversight Committee (attachment 4).

### **The Path Forward**

What is the strategy of Preserve Our Heritage (POH) in moving forward as an organization, and for us as individuals? Much like the CHSRA, we are pursuing several options (or routes if you prefer).

A. Continue to work with CHSRA and its consultants to try to design routes that are acceptable to the vast majority of citizens in southern Merced County and northern Madera County. It needs to be said that some folks representing this project have a willingness to consider input from groups such as POH. In particular, we have had productive meetings with CHSRA Board member, Mr. Tom Richards of Fresno, the only Valley representative on the CHSRA Board. Also, Regional Director Jeff Abercrombie and consultants Dick Wenzel, Gary Kennerly, and Dave Manson have engaged us in positive meetings.

That being said, our overall experience with this project does not provide us with much confidence that the eventual decisions will address our concerns. The decisions seem to be made by non-responsive bureaucrats in Washington D.C. with no regard for the consequences to Valley citizens or their families. We are not yet convinced that the HSR outreach program is much more than a sham to give the appearance of considering citizen input.

As an example, within the last year, an agricultural advisory group was formed by CHSRA. The only farmer member and chairman is a Mr. John Diener who apparently is also a paid consultant with CHSRA (attachment 5). Understandably, many farmers are not convinced our concerns are being responsibly addressed.

Thus, the options below:

B. Continue to engage, cooperate, and coordinate with other groups in the Bay Area, the Central Valley, and southern California who have grave concerns about this project.

C. Continue to participate in the review of the Draft EIR process for both the Merced to Fresno EIR and the Fresno to Bakersfield section. It should be noted that these EIRs have apparently generated a record number of comments in the history of California EIRs. One might surmise that the reason is not overwhelming support for the project.

D. Continue preparation for a lawsuit challenging the EIRs and/or the legality of the HSR project itself should CHSRA ignore our comments and try to force a flawed project down our throat. In that the Draft EIRs are thousands of pages, Preserve Our Heritage hired an EIR expert, and lawyers to help us with our comments. Individually, we then concentrated on specific areas since there was not enough time in the 60 day review period for one person to review the entire document.

In my area alone, the Draft EIR incorrectly identified counties, roads, and creeks. It claims roads exist where there are none. Lawyers indicate that this Draft EIR is a 'target rich' environment. If CHSRA and FRA are determined to inflict this abomination as drafted on the Central Valley, then a lawsuit is certain. It needs to be thoroughly and responsibly re-drafted, and re-circulated.

The Committee needs to be aware that there are several other groups that submitted extensive comments on the Draft EIRs. It might be useful to have Committee staff review the comments of the J.G. Boswell Co. (the largest farm operator in California), the Arm & Hammer Co., the Bay Area groups who have already successfully sued the Authority twice on this project, and especially the several private and public organizations in the Kings County area.

The Committee might also appreciate the fact that most of these grassroots organizations are well organized with hundreds of members. For instance, Preserve Our Heritage had a fund raiser on June 22, 2011 (attachment 6), in the small town of LeGrand, California, attended by several hundred people. Our continuing fund raising and organization efforts are to ensure we have the funds available to mount an effective legal challenge (if necessary) to protect our interests.

E. Preserve Our Heritage as a private organization will continue to encourage Central Valley public agencies to exercise their rights under NEPA (National Environmental Policy Act) to protect their constituents with special emphasis on utilizing the 'Coordination Process'.

### **Conclusions**

#### The Willie Sutton Theory

Mr. Sutton said he robbed banks because, "... that is where the money is."

Does this situation require any deeper thinking than that of Mr. Sutton's? If we are going to spend billions of dollars on High Speed Rail, maybe we should build it where there are people to use it? For the United States as a country, that would be in the north-east corridor.

If it must be in California, then it would be Anaheim to San Diego.

If we must submit to the demands of the FRA and start in the Central Valley, then the only viable option is to use the I-5 corridor and connect San Francisco to L.A. Since there is a lack of water for that agricultural area and corridor already exists, the impacts would be minimal, the land cheaper, and very little required mitigation. Feeder routes to cities like Fresno would offer access to the I-5 HSR train. A system like this works in France.

**Personal**

The impact on the lives of the farmers adversely affected by these proposed routes should not be ignored or lightly dismissed. Nor, should the determination and motivation of those farmers, farm workers, and other Central Valley citizens be minimized. They intend to protect their farms, families, communities, associated business and jobs from an ill advised and poorly planned project.

Most of the farms devastated by this project are family farms representing a family's heritage, legacy, and future. My family's farm is the rule not the exception. Started by my father after three years of military service in Europe during World War II, our family farm has grown from his initial start of 100 acres to 1,400 acres with three of the families now living on the farm.

The potential route through this farm not only takes out homes and adversely affects about half the ranch, but also destroys an environmental habitat in existence for 45 years. This habitat is used, among other things, by the local raptor center to release injured raptors after recovery from injuries. A recent ecological evaluation of the habitat indicated it was the only environmental treasure of this type within many square miles.

Bottom line, the farmers and other affected citizens of the Central Valley have no intention of acquiescing quietly to this project if the proposed routes will devastate our families, homes, farms, businesses and vibrant economic infrastructure which we have developed over decades. Furthermore, we have an obligation to our descendents not to allow the sacrifice of our forefathers to go undefended.

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the Authority's objective has been to maximize the use of existing transportation corridors and rights-of-way for the high-speed train system. Consistent with this objective, extensive portions of the alignment alternatives were described and analyzed as if they were placed within or adjacent to existing rail or highway rights-of-way, rather than on new alignment. Evaluations for the Statewide High-Speed Train system Program EIR/EIS and for the Bay Area to Central Valley High-Speed Train Final Program EIR/EIS have consistently shown a potential for fewer significant environmental impacts along existing transportation facilities than on new alignments through both developed and undeveloped areas;

Figures from the Final Program EIR/EIS documents depict typical cross sections for high-speed train facilities at grade, on an elevated structure, and where twin tunnels might be necessary. These figures show maximum proposed rights-of-way of 100 feet, 50 feet, or 120 feet for these facilities, respectively. At the programmatic level, this EIR has analyzed the impacts of constructing and operating the high-speed train system along the proposed alignment alternatives conservatively, by evaluating direct and indirect impacts within a wide band that exceeds the maximum proposed high-speed train right-of-way, whether in an existing transportation right-of-way or adjacent to it.

For example, for biological impacts, the EIR defines the study area for direct biological impacts as 50 feet on either side of the alignment, and for indirect impacts as 1,000 feet in urban areas and 0.25 mile in rural areas on each side of the alignment. At the project level, when detailed field conditions, resource data, and site-specific facility design information become available, certain impacts disclosed in the Program EIR are expected to be far less in those circumstances when the actual final footprint of high-speed train track can be located within existing rights-of-way, rather than adjacent to them.

To view this document in PDF format, [click here](#)

# Chowchilla Water District

Post Office Box 905 ♦ 327 S. Chowchilla Blvd. ♦ Chowchilla, CA 93610  
Phone (559) 665-3747 ♦ Fax (559) 665-3740 ♦ Email [dwelch@cwdwater.com](mailto:dwelch@cwdwater.com)

Board of Directors

Dan Maddalena ♦ Michael Mandala ♦ Vince Taylor ♦ Kole M. Upton ♦ Mark Wolfshorndt

December 3, 2010

Freedom of Information Act Coordinator  
Office of Chief Counsel  
Federal Railroad Administration  
1200 New Jersey Avenue, Stop 10  
Washington, D.C. 20590

Subject: FOIA Request

To whom it may concern:

As provided in the Freedom of Information Act (FOIA), the Chowchilla Water District (the "District") requests a copy of all documents, communications and correspondence (including electronic email) transmitted between the Federal Railroad Administration and the California High Speed Rail Authority addressing or relating to the route alternatives under consideration for the proposed California High Speed Rail within Madera County and Merced County, California.

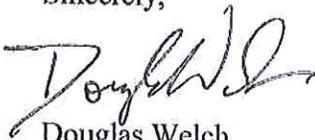
The District is a water district organized under the California Water District Law, codified by California Water Code section 34000 *et seq.*, and serves a portion of northern Madera County and southern Merced County consisting of about 85,000 acres. As such, it is a non-profit governmental entity.

The District requests that the fees be waived for this FOIA request. The District will use the documents provided under this FOIA request to better inform its Board of Directors and the general public it serves of the correspondence between the Federal Railroad Administration and the California High Speed Rail Authority in regards to the selection of the various route alternatives evaluated by the California High Speed Rail Authority.

If the request for waiver of fees is denied, the District is prepared to reimburse fees up to a maximum of \$2,000 dollars.

The contact person for this FOIA request is Douglas Welch. His contact information can be found in the letterhead above.

Sincerely,



Douglas Welch  
General Manager

Attachment 2



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

1200 New Jersey Ave, SE  
Washington, DC 20590

12/9/2010

Mr. Douglas Welch  
General Manager  
Chowchilla Water District  
P.O. Box 905 - 327 S. Chowchilla Blvd  
Chowchilla, CA 93160

Re: FRA File No.: FOIA-11-063

Dear Mr. Welch:

This letter acknowledges receipt by the Federal Railroad Administration (FRA) of your Freedom of Information Act (FOIA) records request seeking: A copy of all documents transmitted between the FRA and the California High Speed Rail Authority relating to the route alternatives under consideration for the proposed California High Speed Rail with Madera, CA.

We have assigned your request the FOIA file number indicated above and are initiating a search of the agency's files for responsive records. Please be advised that the FRA is currently experiencing a high number of FOIA requests and is addressing backlogged requests with all due diligence on a first-in, first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

If you are interested in railroad accident data or reports, including railroad supplied accident reports for specific accidents you can access these materials through the FRA's web site at: <http://safetydata.fra.dot.gov/officeof/safety/>. FRA has also placed its completed FRA Headquarters-Level Railroad Accident Investigation Reports for accidents beginning with January 2005 on our website at <http://www.fra.dot.gov/Pages/1696.shtml>. All of the accidents that have been or are the subject of a headquarters-assigned investigation are identified and reports for completed investigations are available. It typically takes six to nine months from the date of the accident for a report to be completed. FRA's website is updated regularly as new accidents are assigned for investigation and additional investigation reports are completed.

If you are able to satisfy your request through the website, please let us know so we can focus on other pending requests. If you have any questions regarding the FOIA process, please contact me at (202) 493-6065 or [betty.watson@dot.gov](mailto:betty.watson@dot.gov).

Sincerely,

  
Betty J. Watson  
Administrative Staff Assistant

Attachment 3

## MADERA RANCH OVERSIGHT COMMITTEE

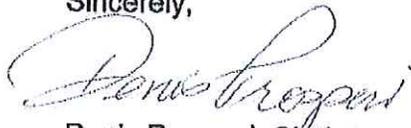
12152 Road 28 1/4, Madera, CA 93637-9199  
(559) 673-3514 / FAX (559) 673-1072

December 12, 2011

California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814

The Madera Ranch Oversight Committee at its meeting of Thursday, December 8, 2011, voted in opposition to the California High Speed Rail Project and to recommend that other agencies do the same.

Sincerely,



Denis Prospero, Chairman  
Madera Ranch Oversight Committee

Attachment 4

**EXHIBIT J - FIRMS SUBJECT TO OFFEROR EX PARTE  
COMMUNICATIONS PROHIBITION DURING SOLICITATION**

Firms on PMT

- Parsons Brinckerhoff
- The Solis Group
- Pat Padilla and Associates
- Cordoba Corporation
- SC Solutions, Inc.
- Turner Engineering Corporation
- Cambridge Systematics
- All Transit Consultants LLC
- Simpson Gumpertz & Heger
- Paragon Partners
- Balfour Beatty
- Technical Advisory
- Spectrum Consult Leslie Rifkin
- The Next Generation
- Julia Sankey
- Gill Mallery

- David Dubbink

- John Diener

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Firms on PMOC

- T.Y. Lin

- Auriga Corporation

Firms on Merced - Fresno RC

- AECOM

- Bender Rosenthal Inc.

- CH2MHill

- CirclePoint

- Critigen

- INOCSA

- EDAW

- HMMH

- HNTB

- Parus

- Parikh

- Lynch

- Psomas

- O'Dell Engineering

- Cross Spectrum Acoustics

Attachment 5

Firms on Fresno - Bakersfield RC

- URS

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
*Truth in Testimony Disclosure*

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: Kole Upton

(2) Other than yourself, name of entity you are representing:  
Preserve Our Heritage

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?  
 YES      If yes, please provide the information requested below and attach your curriculum vitae.  
 NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing: None

Kole Upton  
Signature

12/13/2011  
Date

## Kole Upton

Farmer –Family Partnership –F.M. Upton & Sons

Crops: Wheat, Corn, Oats, Cotton, Almonds, & Pistachios

Married 47 years – three children

Education: Stanford, 1965, B.S., Engineering

University of Southern California, 1970, M.A.O.M.,  
Masters in Aerospace Operations Management

Military: Captain, USAF, Avionics Officer, 1965-1971

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### Water & Ag Positions:

Past Chairman Friant Water Users Authority

Director, Chowchilla Water District (CWD).

Director, LeGrand-Athlone Water District.

Chairman, Board of Directors, City of Chowchilla, Red Top Conservation District, and CWD - Joint Powers Authority.

Chairman, Board of Directors, Merced County Sphere of Influence (SOI) Water Users Association.

Chairman, Madera/Chowchilla Water & Power Authority.

At large member, Board of directors, Madera Water Bank Oversight Committee

Director, Merced Irrigation District Foundation.

Director & past chairman, California Wheat Commission.