Testimony Brief from the Inspector General, High-Speed Rail

March 11, 2024 Assembly Committee on Transportation

Introduction

On September 1, 2023, California's first-ever Inspector General of the High-Speed Rail was sworn into office. The Inspector General's role is to improve oversight and accountability by conducting independent, objective inspections, audits, reviews, and investigations of the Authority's planning, delivery, and operation of the High-Speed Rail. Since his appointment the Inspector General has hired three additional members of management and plans—pending final approval of a proposed fiscal year 2024-25 budget change proposal—to have an office of approximately 15 professionals with in-depth knowledge and experience in conducting independent audits and reviews.

The Office of Inspector General, High-Speed Rail (OIG-HSR) recently completed a review of the High-Speed Rail Authority's (Authority) 2023 Project Update Report (project update report) and is currently reviewing the Authority's draft 2024 Business Plan (draft business plan). Beginning in fiscal year 2024-25, the OIG-HSR will begin conducting a variety of operational reviews of critical elements of the high-speed rail project, including the Authority's efforts to control project costs, oversee its contractors, and secure necessary funding.

Overview

In its project update report, the Authority provided a revised schedule and cost estimate for the Merced-to-Bakersfield segment. In its draft business plan, the Authority continues to reflect this same schedule and cost estimate. With these key elements of the plan continuing to hold in place, the Authority has an opportunity to focus its efforts on refining other portions of the plans, strategies, and statutorily required disclosures detailed in its draft business plan. In this testimony brief, we highlight the need for the Authority to do following:

- Publish a more detailed funding plan for the Merced-to-Bakersfield segment.
- Formally establish a policy on when it will update project costs.
- More clearly address each statutorily required reporting element.
- Better describe its progress in establishing the needed operating agreements, as well as the implementation of management controls designed to mitigate key project risks.

Implementation of Recommendations from OIG-HSR Review of 2023 Project Update Report Will Strengthen the Authority's Annual Reports

In its review of the project update report, the OIG-HSR recommended that the Authority improve the specificity of its Merced-to-Bakersfield funding plan and formally adopt a policy that describes the conditions under which it will update project costs. The Authority indicated it would implement both recommendations prior to or concurrent with the Board's final adoption of the 2024 business plan—currently expected to occur on April 11, 2024. If fully implemented, the benefits of these recommendations will be as follows:

- Project stakeholders, including the Legislature, will know when the current gap in secured funding for components of the Merced-to-Bakersfield segment (see page 59, Exhibit 3.3) will begin to negatively impact the Authority's ability to stay on schedule.

- Project stakeholders will have a better understanding of how realistic the $4.7 billion target for future federal grants is (see page 53, Exhibit 3.0) and will therefore have a better understanding of the extent to which the State may need to provide additional funds to keep the Merced-to-Bakersfield segment on schedule.

- Decisions related to updates of project costs in the Authority's annual reports will be subject to a board-adopted, publicly vetted policy, the development of which will include an opportunity for project stakeholders to provide input and feedback.

The Authority's Draft Business Plan Does Not Appear to Fully Address All Statutorily Required Reporting Elements

We are currently reviewing the underlying support for the draft business plan and intend to publish the results of our review with the publication of final business plan. Even so, we performed an initial comparison of the contents of the draft business plan with reporting requirements in state law and found that the draft plan does not clearly address all statutory requirements. In particular, we found the following:

- The draft business plan does not clearly address each aspect of approximately half of the 10 reporting requirements that pre-date SB198. For example:

  - The draft's funding plan does not describe the Authority's "the level of confidence" for obtaining the types of funding the Authority identified in the plan. *This item would likely be resolved by implementing our recommendation described above.*

  - The "discussion of all reasonably foreseeable risks" narrowly focuses on a selection of five risks, which do not represent all the top risks identified by the Authority. As a result, the draft business plan does not describe, for example, "the strategies, processes and other actions [the Authority] intends to utilize to manage" threats to its schedule monitoring and management, which the Authority identified as its second-highest risk.

- The draft business plan also does not adequately address some of the new reporting requirements imposed by SB198. For example, it does not:

- Provide required information related to the completion schedule and costs associated with right-of-way acquisitions for the Merced-to-Bakersfield segment.

- Clearly list all funding commitments beyond the Merced-to-Bakersfield segment. Spread out in two chapters, the draft's discussion does provide information on specific projects outside of this segment, but it does not affirmatively state that these projects represent all funding commitments in need of disclosure.

The Authority indicates that it will work with us to resolve our concerns prior to publication of its final business plan. Even so, to help avoid similar problems in the future, we will be recommending in our final report that the Authority enhance Appendix A to include more specific referencing to where its annual reports address each state reporting requirement.

The Authority Should Increase Transparency and Clarity in Some Areas of the Draft Business Plan

- The draft business plan needs greater detail on the status of key operating agreements.
  - The Authority's 2023 project update report included a timeline for the various operating agreements necessary to implement the Authority's early operating segment business model (see page 29, Exhibit 2.2). That timeline indicated that a portion of the agreements would be put in place in calendar years 2023 and 2024.
  - However, the draft business plan now indicates that the initial agreements would occur in calendar years 2024 and 2025 (see page 35, Exhibit 2.6). The associated narrative does not describe why no demonstrable progress on these agreements occurred in 2023 or why the apparent lack of progress should not be of concern to stakeholders. Although this section complies with statutory reporting requirements, stakeholders should reasonably expect that, absent a demonstration of progress, the plan would describe why more progress has not occurred.

- The draft business plan's discussion of project risks does not clearly describe the implementation status of controls designed to mitigate those risks.
  - Although the draft business plan often describes controls on generally equivalent terms, the Authority's underlying documentation indicates the controls are in varying states of implementation.
  - For those controls it intends to implement in the future, the narrative does not commit the Authority to a particular date by which it will implement the controls, which not only decreases clarity but also accountability.