

✘ On Friday, California Superior Court Judge Michael Kenny [ruled](#) that California's plan for the initial construction segment of high speed rail in the San Joaquin Valley violated the terms of the [2008 voter-approved initiative](#) that launched the project. Petitioners and some in the media are calling it a [major setback](#) for the system. However, the judge acknowledged that the remedy for this violation is unclear, and he requested a hearing for this next phase to discuss further.

On the merits, the court made the right call. The draft 2011 business plan that the court analyzed appeared to violate the terms of the 2008 initiative, which required full funding to be identified for the first operating segment. The Authority determined that this first segment would be in the San Joaquin Valley. However, the Authority did not have all the funds identified for this segment but instead identified all funds for a smaller "initial construction segment," which will run from somewhere near Madera to somewhere near Bakersfield. The court also concluded that the Authority should have finalized all environmental review on the larger segment, which the Authority has not yet done, except for the initial construction segment.

Notably (and oddly), the court did not analyze the 2012 final business plan, which overrides the draft plan and was approved by the Legislature when it disbursed bond funds to the Authority.

So here's the hard part for the court and the petitioners: what can be done to remedy the deficiencies in the draft plan? The court explicitly stated that it does not have authority under the initiative to overturn the legislation disbursing the bond funds. So it could potentially require the Authority to draft a new business plan, although the Authority already did so with the 2012 final plan. The court could also prevent the Authority from spending the legislatively-appropriated bond money, but that might run into separation of powers issues if the court is interfering with the Legislature's lawful actions to spend funds. Complicating matters, the federal government has jurisdiction over the system through the Surface Transportation Board authority, raising preemption concerns. And either way, the outcome will likely be appealed.

Ultimately, the decision may be more of a psychological setback for the system than a legal one, as it certainly creates a bad set of headlines for the Authority. But the potential is there for a disruption to the timeline for construction, which is still set to begin this summer. All in all, it's just another challenge for Governor Brown's "[Little Engine that Could](#)."

For those who are interested in ways to implement the system effectively in the San Joaquin

Valley, I'll blog tomorrow on the [UCLA / UC Berkeley Law report](#) that will be released on this subject.