

HIGH SPEED LEFTOVERS: TAKINGS AND JUST COMPENSATION

I. INTRODUCTION

California is in the midst one of the largest transportation projects in modern U.S. history in its attempt to connect the northern and southern regions of the Golden State by train.¹ The massive undertaking has a growing budget of sixty-four billion dollars and is projected to be completed by 2029.² Similar to the *AGV Italo* of Europe, and the *Shinkansen* of Japan, the California's High-Speed Rail (HSR) will cut travel times considerably for many Californians.³ The HSR is projected to travel at 220 miles per hour and allow travelers to go from San Francisco to Los Angeles in two hours and forty minutes.⁴

Along with the growing infrastructure come a number of growing pains.⁵ Many farmers in the Central Valley have contiguous parcels that are being severed by the HSR⁶. This creates a unique hardship for farmers and ranchers that is not shared by neighboring landowners.⁷ In many cases, the HSR is dividing land, resulting in severed irrigation lines that span the parcel, creating the need for new irrigation systems.⁸ Other farmers own farm equipment that is used for their entire property, which is becoming land locked, because of the rail lines.⁹ These land divisions force farmers to add a four-to-six-mile commute to get to their severed piece of land.¹⁰ The construction of the HSR

¹ *Managing The Nation's Largest Infrastructure Project*, CALIFORNIA HIGH SPEED RAIL AUTHORITY (March 1, 2017), http://www.hsr.ca.gov/docs/about/legislative_affairs/SB1029_Project_Update_Report_030117.pdf.

² *High-Speed Rail: Connecting & Transforming California*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY (June 2017), http://hsr.ca.gov/docs/newsroom/fact%20sheets/HSR_Connecting_Factsheet.pdf.

³ Tim Sheehan, *In California's high-speed train efforts, worldwide manufacturers jockey for position*, THE FRESNO BEE (Dec. 27, 2014), <http://www.fresnobee.com/news/local/high-speed-rail/article19528899.html>.

⁴ *Noise and High-Speed Rail*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY (April 2016), http://hsr.ca.gov/docs/newsroom/fact%20sheets/cahsr_noise_2016.pdf.

⁵ Interview with Michael Dias, Founding Partner, Dias Law Firm Inc., in Hanford, Cal. (June 8, 2017).

⁶ Telephone Interview with Frank Olivera, Co-Chairman, Citizens for California High Speed Rail Accountability (May 17, 2017).

⁷ Interview with Michael Dias, *supra* note 5.

⁸ Tim Sheehan, *Path of high-speed rail worries Valley farmers*, THE FRESNO BEE (Jan. 8, 2011), <http://www.fresnobee.com/news/local/high-speed-rail/article19508730.html>.

⁹ *Id.*

¹⁰ *Id.*

also involves building of enclosures such as fences and walls to ensure the safety of the surrounding community.¹¹ This requires farmers to increase the perimeter area required for turning their farm equipment.¹²

In other cases, land is being acquired for the HSR, but it is being neglected by the High-Speed Rail Authority.¹³ This results in infestation in plots of land that turn into breeding grounds for snakes and other pests, which are likely to go affect neighboring parcels.¹⁴ Another common problem that is affecting farmers and property owners alike is the use of out of state appraisers.¹⁵ As the appraisers are not from the area, they are not fully aware of the local topography and potential uses for the land, which is reflected in the initial bids that landowners receive.¹⁶ All of these are factors should be taken into consideration when determining just compensation.¹⁷

California diverges from the federal standard of just compensation, as it requires the highest price for the property that a willing buyer would have paid in cash to a willing seller.¹⁸ The California standard differs from the federal standard, which requires a full and perfect equivalent for the property taken.¹⁹ The key distinction between the two is that California has a higher threshold for property that is being taken, as it requires “the highest price.”²⁰ In order to assure that farmers are receiving just compensation for their land, it is important to keep farmers informed of legal remedies and the factors being taken into consideration in computing just compensation.²¹

This comment will discuss the standards for just compensation based on federal and state law as applied to land acquisition for the High-Speed Rail Project in the Central Valley. Section II of this comment will lay out the factual background of the development of the High-Speed Rail Project, and the

¹¹ California High-Speed Train Project Design Criteria, Design Criteria 6–1.

¹² California High-Speed Train Project Environmental Impact Report, California High-Speed Train Project Environmental Impact Report 1–2.

¹³ Interview with Michael Dias, *supra* note 5.

¹⁴ *Id.*

¹⁵ Interview with William Brewer, Partner, Motschidler, Michaelides, Wishon, Brewer & Ryan LLP, in Fresno, Cal. (May 27, 2017).

¹⁶ Interview with Michael Dias, *supra* note 5.

¹⁷ *Id.*

¹⁸ Interview with William Brewer, *supra* note 15.

¹⁹ *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893) (The owner's loss, not the taker's gain, is the measure of such compensation.); *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 281 (1943); *United States v. Miller*, 317 U.S. 369, 375 (1943); *Roberts v. New York City*, 295 U.S. 264 (1935) (The value of the property to the government for its particular use is not a criterion.) *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913); *United States v. Twin City Power Co.*, 350 U.S. 222 (1956) (Attorneys' fees and expenses are not embraced in the concept); *Dohany v. Rogers*, 281 U.S. 362 (1930).

²⁰ Interview with William Brewer, *supra* note 15.

²¹ *Id.*

problems facing both the Rail Authority and Landowners in the Central Valley. Section III discusses the legal authority for Federal takings and just compensation as established under the Fifth Amendment's takings clause and California's standard for Just Compensation under Article 1, Section 19(a) of the California State Constitution. Section IV discusses recommendations that may provide for ease in acquisition of land and compensation based on the "highest price" as outlines under the California Standard for just compensation under Article 1, Section 19(a). The comment will conclude in part V providing a summary of the developments of just compensation for land acquired by the Rail Authority from the first round of offers to know, and acknowledge the need for more transparency between the Rail Authority and landowners moving forward.

II. FACTUAL BACKGROUND

A. History of California's High-Speed Rail Project

The plan for a high-speed rail project was introduced as part of the HSR Development Act of 1994, authored by then-California representative, Lynn Schenk.²² California was determined as a feasible destination for the HSR in 1996, by the HSR Commission.²³ That same year, the California HSR was created by the state legislature.²⁴ By November 2008, the bond measure Proposition 1A was approved by the state's voters, and in 2009, eight billion dollars in federal funds was made available to the California High-Speed Rail Authority (CHSRA).²⁵ Construction of Phase I began in 2012, and will connect the northern region of San Francisco to the southern region of Los Angeles.²⁶ The first portion of construction has been coined as, the "Backbone" of the High-Speed Rail and will span from Merced to Bakersfield.²⁷ The Backbone consists of four construction packages.²⁸ Package 1 will span from Madera to Fresno, Packages 2 and 3 will connect Fresno to the Tulare county line, and Package 4 will span from Tulare County to north of Bakersfield.²⁹ Between the areas of Madera and Bakersfield there are a total of 1678 parcels of land

²² *Connecting and transforming California 2016 Business Plan*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY (May 1, 2016), http://www.hsr.ca.gov/docs/about/business_plans/2016_BusinessPlan.pdf.

²³ *Id.*

²⁴ *About High-Speed Rail in California*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY, <http://www.hsr.ca.gov/About/index.html> (last visited Jun 2017).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *High-Speed Rail Program Fact Sheet*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY, http://www.hsr.ca.gov/Newsroom/fact_sheets.html (last visited June 2017).

²⁸ *Id.*

²⁹ *Id.*

that are approved for acquisition, 1208 of which have been acquired as of this writing.³⁰

Although the bond measure for construction of the HSR was voter-approved, some Californians feel they are being left behind as construction of the high-speed rail continues.³¹ Farmers in the Central Valley have growing concerns about the acquisition of their property for purposes of HSR construction.³² Farmers who are willing to sell their land are concerned about the means being used for determining compensation for these acquisitions.³³ The CHSRA uses fair market value to determine compensation owed to landowners.³⁴ However, many farmers feel that they are not being justly compensated for their land.³⁵

The first phase of land acquisition began in 2012.³⁶ The initial appraisals faced a substantial push back from farmers who argued that many factors were not being taken into consideration such as turning radius, severed pipelines, additional commute due to bisected parcels, and infestation.³⁷

As construction of the High-Speed Rail begins to develop, a number of property owners have begun to deal with the results of that development.³⁸

B. The Damage to Farmers That Results from a High-Speed Rail Taking

As Phase 1 of the high-speed rail develops, land is quickly being appropriated by the right-of-way authority resulting in confrontations between landowners and the High-Speed Rail authority.³⁹ Currently, 453 eminent domain lawsuits have been filed⁴⁰ along with 591 Resolutions of Necessity (RON), 279 of which have been settled.⁴¹ There are growing concerns as land acquisition begins to develop.⁴²

Some farmers worry that the rail's route, which would diagonally cut through their fields, would make it financially burdensome to continue

³⁰ Telephone Interview with Karen Massie, Information Officer, California High Speed Rail Authority (Mar. 18, 2017).

³¹ Telephone Interview with Frank Olivera, *supra* note 6.

³² Interview with Michael Dias, *supra* note 5.

³³ Telephone Interview with Karen Massie, *supra* note 30.

³⁴ *Your Property, Your High-Speed Rail Project*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY, https://www.hsr.ca.gov/docs/about/legislative_affairs/JLAC_2.pdf (last visited Jul 2017).

³⁵ Telephone Interview with Karen Massie, *supra* note 30.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Telephone Interview with Karen Massie, *supra* note 30.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Interview with Michael Dias, *supra* note 5.

growing.⁴³ For instance, The Rail Authority has planned to lay track east of 9th Avenue in Kings County.⁴⁴ The track will cross 8th Avenue and travel southeast until it lines up with 7 ½ Avenue.⁴⁵ The train will ultimately align itself with Highway 43.⁴⁶ However, this path will tear up permanent crops of walnuts, cherries, and almonds.⁴⁷ Farm management will be more difficult as parcels will be severed, resulting in increased travel times of several miles.⁴⁸ Landowners make multiple trips across their land daily, if the rail line cuts through their property, they will have to drive four to seven miles out of the way just to get to the other side of the field.⁴⁹ Many grape farmers say that the Authority plans to put fences so close to their fields that they will be required to tear out additional vines in order to make room to turn their tractors.⁵⁰ Cherry farmers argue that the state will disrupt irrigation systems by cutting off portions of their fields from their wells.⁵¹

Chapter 3.14 of the Environmental Impact Report/Environmental Impact Statement conducted by the High-Speed Rail Authority asserts that diagonal alignments would bisect parcels, potentially creating remainder parcels that are too small to maintain economic activity.⁵² The right-of-way authority asserts that large remainder parcels are not at risk based on size alone, meaning that the Authority is not appropriating land based on size.⁵³ However, diagonal alignments could cause hardships in maintaining economic activity on otherwise viable parcels.⁵⁴ For example, a remainder parcel may become isolated from the farm activity center, requiring farm workers (and farm equipment) to take long detours on public roads.⁵⁵ The right-of-way authority intends to combat this by selling remainders to neighboring landowners, in

⁴³ Frank Oliveira, *Commentary: Kings County's case against high-speed rail*, THE SENTINEL (May 18, 2011), http://hanfordsentinel.com/news/opinion/todays_opinions/commentary-kings-county-s-case-against-high-speed-rail/article_cbf055d4-819c-11e0-a250-001cc4c03286.html.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Brian Joseph, *High-speed rail's coming battle: Powerful land owners*, ORANGE COUNTY REGISTER (2012), <http://www.ocregister.com/2012/02/06/high-speed-rails-coming-battle-powerful-land-owners/> (last visited Nov. 13, 2017).

⁵⁰ Ralph Vartabedian, *Ready to fight: Some growers unwilling to lose land for bullet train*, LOS ANGELES TIMES (2015), <http://www.latimes.com/local/politics/la-me-bullet-land-take-20150314-story.html> (last visited Nov. 13, 2017).

⁵¹ *Id.*

⁵² California High-Speed Train Project Environmental Impact Report, *supra* note 12.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

cases in which the landowner feels that the economic value of the land has been disrupted.⁵⁶

The acquisition process used by the HSR allows the authority to acquire the land via protection acquisition, in which the authority determines where it is financially feasible to purchase a property that is about to be developed to save costs and protect it for the project.⁵⁷ This protection can only occur after a draft environmental document has been circulated.⁵⁸

The acquisition process does not create a definitive timeline in which the property will be developed. This results in a number of problems for neighboring landowners.⁵⁹ In places like Hanford, California, raisin crops have been taken by the HSR for over a year.⁶⁰ However, no development has taken place, the result is that the crops begin to rot due to neglect, and become breeding grounds for snakes and insects.⁶¹ This in turn requires neighboring farmers to spray their own crops more often in order to avoid infestation.⁶² Also, because there is no upkeep these decaying pieces of land become attractive places for passing drivers to dump their old furniture and other trash.⁶³ Furthermore, early land acquisition deprives farmers from harvesting the land for another season.⁶⁴ Therefore, early acquisition results in wastage.⁶⁵

Another key problem in the acquisition process are the appraisals that are being given to farmers.⁶⁶ The Rail Authority has asserted that all high-speed rail appraisers (regardless of where they make their home) are certified by the State of California and must follow the state and federal rules and regulations regarding property acquisition.⁶⁷ However, the fact that the appraisers are certified by the State of California does not account for their lack of knowledge on local topography.⁶⁸ In many cases, appraisers from Los Angeles and Texas are being used to appraise farmland in Fresno.⁶⁹ This is problematic because these appraisers are not familiar with local concerns regarding cropping patterns or water issues in the valley.⁷⁰ In some instances, unrelated

⁵⁶ Telephone Interview with Don Grebe, Director, Real Property for the California High-Speed Rail Authority (April 6, 2017).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Interview with Michael Dias, *supra* note 5.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Interview with Michael Dias, *supra* note 5.

⁶⁵ *Id.*

⁶⁶ Telephone Interview with Frank Olivera, *supra* note 6.

⁶⁷ Telephone Interview with Don Grebe, *supra* note 56.

⁶⁸ Telephone Interview with Karen Massie, *supra* note 30.

⁶⁹ *Id.*

⁷⁰ Interview with Michael Dias, *supra* note 5.

comparable properties being used to establish valuation.⁷¹ For instance, a property in Madera or Porterville may be used to establish the valuation of a property in Hanford.⁷²

The burden of proof to show damages is on the landowner.⁷³ In order to assert damages the farmers must prove that their land is intrinsically less valuable because the activities available to be carried out on the property have become limited.⁷⁴

III. LEGAL AUTHORITY

A. Eminent Domain

1. Federal Eminent Domain

The Federal Eminent Domain power is restricted by the Fifth Amendment of the U.S. Constitution.⁷⁵ The power of eminent domain provides that the government may take private property so long as two conditions are satisfied.⁷⁶ First, that the taking is for a public use, and second, that the landowner be given just compensation.⁷⁷

The power of eminent domain allows the government to take title from a private party for public use.⁷⁸ *Kelo v. City of New London*, 545 U.S. 469 (2005), served as a landmark case in developing the meaning of public use.⁷⁹ In *Kelo*, the city of New London, Connecticut approved a new development project that involved using its eminent domain authority to seize private property to sell to private developers.⁸⁰ The court held that a state's use of eminent domain to condemn property from private individuals and redistribute it to other private individual constitutes a public use under the Fifth Amendment if it is rationally related to a conceivable public purpose.⁸¹

Berman v. Parker, 348 U.S. 26 (1954), established that the Fifth Amendment does not limit Congress' power to seize private property with just compensation to any specific purpose.⁸² The court concluded that the power to

⁷¹ *Id.*

⁷² *Id.*

⁷³ *City of Los Angeles v. Superior Court*, 124 Cal.Rptr.3d 499, 506 (2011).

⁷⁴ *Id.*

⁷⁵ U.S. Const. amend. V.

⁷⁶ *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (2000) 83 Cal.App.4th 556, 561 (internal citation omitted).

⁷⁷ U.S. Const. amend. V.

⁷⁸ U.S. Const. amend. V.

⁷⁹ *Kelo v. City of New London*, 545 U.S. 469 (2005).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See Berman v. Parker*, 348 U.S. 26 (1954).

determine what values to consider in seizing property for public welfare is Congress' alone, and there is nothing in the Fifth Amendment that stands in the way.⁸³ The land acquisition process of the state of California does however differ from the federal standard.⁸⁴

2. California Eminent Domain

The California Constitution provides greater protection than United States Constitution because it states that, "private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for the owner."⁸⁵ The primary distinction between the federal and California standards of eminent domain is that California compensates for damaged property.⁸⁶

This means that land does not need to be actually taken in order to constitute a taking, it must merely be damaged by a taking, in order to be compensable.⁸⁷ This point is of particularly important for landowners who have bisected parcels.⁸⁸ In cases in which a parcel is only being partially taken, the landowner can argue that the remaining parcel over which he or she still maintain title is effected by the taking.⁸⁹ A common example of this is severed pipelines.⁹⁰ If a water system spans the length of the parcel and there is a partial taking of property, under the California Constitution, the landowner will be able to assert damages on the remaining parcel caused by the taking.⁹¹

The landowner has the added burden of showing that the injury suffered is specific to the landowner.⁹² Therefore, an injury that is common amongst all landowners is not compensable.⁹³ It is not enough for the landowner to claim that the noise of the rail is an annoyance, as that is common to all landowners in the vicinity.⁹⁴ However, a landowner can claim that building a wall or structure near a property line prevents the landowner from being able to turn his or her farm equipment, which results in having to take out extra grape

⁸³ U.S. Const. amend. V.

⁸⁴ Cal. Const. art. I, § 19.

⁸⁵ Cal. Const. art. I, § 19.

⁸⁶ Interview with William Brewer, *supra* note 15.

⁸⁷ Cal. Const. art. I, §19.

⁸⁸ Telephone Interview with Karen Massie, *supra* note 30.

⁸⁹ Interview with Michael Dias, *supra* note 5.

⁹⁰ Telephone Interview with Karen Massie, *supra* note 30.

⁹¹ Interview with William Brewer, *supra* note 15.

⁹² *City of Berkeley v. von Adelung*, 29 Cal. Rptr. 802, 803 (Cal. Ct. App. 1963); Mary Raterman-Doidge, *Un-Just Compensation: How Severance Damages and Inverse Condemnation Will Affect California High-Speed Rail Takings* (2012) 21 San Joaquin Agric. L. Rev. 235, 260.

⁹³ *Id.*

⁹⁴ *Id.*

vines.⁹⁵ This is a unique injury, that is particular to landowners whose parcels have been bisected, and is not common amongst the class.⁹⁶ Therefore, it should be compensable, as the injury likely causes a taking.⁹⁷

B. Takings

There are a variety of takings that fall under the Takings Clause of the Fifth Amendment, which include Direct Condemnation, Inverse Condemnation, and Judicial Takings.⁹⁸ Direct and Inverse Condemnation cases only arise if the landowner and Rail Authority cannot agree on a price for transfer of title. For purposes of this piece we will not look into Judicial Takings but will discuss Federal and California takings instead.

1. Direct Condemnation

Direct Condemnation occurs when the government takes private property for public use and pays fair compensation to the owner.⁹⁹ Eminent Domain is the government's remedy for a taking.¹⁰⁰ Eminent domain takes place when the government initiates a condemnation action.¹⁰¹ In respect to high-speed rail, a condemnation authority will assert its power of eminent domain to attain title to the property from a landowner.¹⁰² A taking occurs when the condemnation authority establishes a price based on just compensation and that price is paid.¹⁰³ If a landowner refuses to sell his property to the Rail Authority, a condemnation lawsuit will be prepared and filed by the Rail Authority, this process will be discussed further in the sections below.¹⁰⁴

2. Inverse Condemnation

Inverse condemnation can occur through a physical taking or regulatory taking.¹⁰⁵ A Physical Taking occurs when the regulation is considered a taking and is per se unconstitutional and requires just compensation.¹⁰⁶ A regulatory

⁹⁵ Interview with Michael Dias, *supra* note 5.

⁹⁶ Raterman-Doidge, *supra* note 92.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Raterman-Doidge, *supra* note 92.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

taking occurs when the government regulation diminishes the value of a private citizen's property, requiring just compensation.¹⁰⁷

The landowner's remedy to eminent domain is an inverse condemnation action.¹⁰⁸ This occurs when the landowner claims that the government took property by invasion.¹⁰⁹ Here, the landowner must show that there are damages to their property, a temporary invasion, or when the government has failed to file an eminent domain suit to compensate landowners for damages or taking of the property that have occurred due to a public improvement project.¹¹⁰ Inverse condemnation proceedings are implemented when there has been a taking by the government, but the government has failed to file an action prior to the taking, or reimburse the property owner for his or her land.¹¹¹

3. Federal Takings

The Fifth Amendment of the United States Constitution reads, "nor shall private property be taken for public use, without just compensation."¹¹² The process by which private property is acquired is known as eminent domain.¹¹³ Its applicability to the states is provided through the Fourteenth amendment which states, "Nor shall any State deprive any person of life, liberty, or property, without due process of law".¹¹⁴ The Fourteenth Amendment provides that due process of law be provided for a violation of a fundamental right and a right is fundamental if it is expressly stated in the Constitution or if the Supreme Court has ruled it as being fundamental.¹¹⁵ Therefore, both the Fifth and the Fourteenth Amendments ensure that some form of reimbursement be provided in order to compensate a party for the seizure of private property.¹¹⁶ The California standard for takings is higher than the federal standard.¹¹⁷

4. California Taking

In California, the California State Constitution is the leading authority for acquisition of land in the state of California.¹¹⁸ Article 1, Section 19(a) of the California State Constitution states that private property may be taken or

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² U.S. CONST. amend. V.

¹¹³ CAL. CODE CIV. PROC. § 1240.010.

¹¹⁴ U.S. CONST. amend XIV, § 1.

¹¹⁵ U.S. CONST. amend XIV, § 1.

¹¹⁶ Interview with William Brewer, *supra* note 15.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

damaged for a public use and only when just compensation... has first been paid to, or into court for the owner.¹¹⁹ Article 1, Section 19(e5) states that, public work or improvement means facilities or infrastructure for the delivery of public services such as streets or highways, public transit, railroads.¹²⁰ In early American history, the state used its taking power to establish roads, which served a public purpose because they improved infrastructure.¹²¹ Similarly, the High Speed Rail serves the economy by improving infrastructure and contributing to the economy, thus serving a public purpose.¹²² While the High Speed Rail does likely serve a public purpose, there still remains potential problems with just compensation.¹²³

C. Just Compensation

Under the Just Compensation Requirement of the Fifth Amendment, “a full and perfect equivalent for the property taken” must be given.”¹²⁴ The general standard for just compensation is the market value of the property, or what a willing buyer would pay a willing seller.¹²⁵ “However, just compensation does not require payment for losses or expenses incurred by property owners...incidental to, or as a consequence of the taking of real property, if they are not reflected in the market value of the property taken.”¹²⁶

¹¹⁹ CAL. CONST. art. 1, §19(a).

¹²⁰ CAL. CONST. art. 1, §19(e)(5).

¹²¹ Powell & Rohan, *supra* note 11; § 79E.01[1][b].

¹²² Merced to Bakersfield High-Speed Rail Project, California High-Speed Rail Authority (2009), http://www.hsr.ca.gov/docs/programs/statewide_rail/proj_sections/Merced_Bakersfield/Merced_to_Bakersfield_Boards_for_Scoping_Meetings.pdf (last visited Jun 2017).

¹²³ *Id.*

¹²⁴ U.S. CONST. amend. V; *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893) (The owner's loss, not the taker's gain, is the measure of such compensation.); *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 281 (1943); *United States v. Miller*, 317 U.S. 369, 375 (1943); *Roberts v. New York City*, 295 U.S. 264 (1935). The value of the property to the government for its particular use is not a criterion. *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913); *United States v. Twin City Power Co.*, 350 U.S. 222 (1956). Attorneys' fees and expenses are not embraced in the concept. *Dohany v. Rogers*, 281 U.S. 362 (1930).

¹²⁵ *United States v. Miller*, 317 U.S. 369, 374 (1943); *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 275 (1943). *See also* *United States v. New River Collieries Co.*, 262 U.S. 341 (1923); *Olson v. United States*, 292 U.S. 264 (1934); *Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949) (“Exclusion of the value of improvements made by the Government under a lease was held constitutional.”); *Old Dominion Land Co. v. United States*, 269 U.S. 55 (1925).

¹²⁶ *Mitchell v. United States*, 267 U.S. 341 (1925); *United States ex rel. TVA v. Powelson*, 319 U.S. 266 (1943); *United States v. Petty Motor Co.*, 327 U.S. 372

“Fair market value is the highest price for the property that a willing buyer would have paid in cash to a willing seller assuming that, there is no pressure on either one to buy or sell, and the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.”¹²⁷ A key distinction between the federal standard for fair market value and the California standard is that California bases fair market value on “highest price”.¹²⁸ This is important because it distinguishes between the federal standard of “what a willing buyer would pay a willing seller.”¹²⁹ “Therefore, California does not merely compensate a taken property owner for the mean price what a property is worth but rather the highest price.”¹³⁰

“The estimate of just compensation is not required to be made by a jury but may be made by a judge or entrusted to a commission or other body.”¹³¹ If a body other than a court is designated to determine just compensation, its decision must be subject to judicial review.¹³² In many cases, the entire parcel of land is not taken, altering the fair market value standard for just compensation.¹³³ A partial taking occurs when the government takes less than the entire parcel of land and leaves the owner with a portion of what he had before; in such a case compensation includes any diminished value of the remaining portion *severance damages* as well as the value of the taken portion.¹³⁴ If only a portion of a tract is taken, the owner's compensation

(1946). For consideration of the problem of fair compensation in government-supervised bankruptcy reorganization proceedings, see *New Haven Inclusion Cases*, 399 U.S. 392, 489 -95 (1970).

¹²⁷ CACI No. 3501.

¹²⁸ Interview with William Brewer, *supra* note 15.

¹²⁹ *United States v. Miller*, 317 U.S. 369, 374 (1943); *United States ex rel. TVA v. Powelson*, 319 U.S. 266, 275 (1943). *See also* *United States v. New River Collieries Co.*, 262 U.S. 341 (1923); *Olson v. United States*, 292 U.S. 264 (1934); *Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949) (“Exclusion of the value of improvements made by the Government under a lease was held constitutional.”); *Old Dominion Land Co. v. United States*, 269 U.S. 55 (1925).

¹³⁰ Interview with William Brewer, *supra* note 15.

¹³¹ *Bauman v. Ross*, 167 U.S. 548 (1897) (Even when a jury is provided to determine the amount of compensation, it is the rule at least in federal court that the trial judge is to instruct the jury with regard to the criteria and this includes determination of “all issues” other than the precise issue of the amount of compensation, so that the judge decides those matters relating to what is computed in making the calculation.); *United States v. Reynolds*, 397 U.S. 14 (1970).

¹³² *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 327 (1893).

¹³³ Interview with William Brewer, *supra* note 15.

¹³⁴ *United States v. Miller*, 317 U.S. 369, 375 -76 (1943) (“On the other hand,” the Court added, “if the taking has in fact benefitted the remainder, the benefit may be set off against the value of the land taken.”) *Id.*

includes any element of value arising out of the relation of the part taken to the entire tract.¹³⁵

The reason that these cases are going to court is because the landowners are not receiving the highest price for their land.¹³⁶ The department of transportation picks a mean price in appraising the cost of the land. This is not legal, as the price should be the highest price.¹³⁷ This is partially a result of inadequate appraisals.¹³⁸ During negotiations between landowners and the High-Speed Rail Authority, the actual price that landowners receive is always higher than the initial offer presented to the landowner.¹³⁹ This is important to note, as settlements between landowners and the HSRA are often in the form of contract.

IV. LEGAL ANALYSIS

A. High-Speed Rail's Impact on Just Compensation

“A majority of the HSRA’s property transactions are settled by contract.”¹⁴⁰ This means that most landowners tend to negotiate with the Authority on a price and relinquish title to the HSRA.¹⁴¹ “However, if the Authority and the landowner cannot agree on the terms of sale, the Authority may initiate the eminent domain process, and acquire the desired property through a condemnation proceeding.”¹⁴²

Prior to filing a condemnation action, the Authority gives landowners the “opportunity to question whether public interest, necessity, planning and location” do indeed require the proposed property in order to complete the project.¹⁴³ The Authority then prepares the documents for the condemnation lawsuit, which are “filed with the court in the county where the property is located.”¹⁴⁴ Then, a “summons and complain in eminent domain will be served on all persons having a property interest in the parcel. The persons served then have 30 days to answer the lawsuit.”¹⁴⁵

Condemnation lawsuit documents are prepared by the Authority and led with the court in the county where the property is located.¹⁴⁶ The summons and

¹³⁵ See *Bauman v. Ross*, 167 U.S. 548.

¹³⁶ Interview with William Brewer, *supra* note 15.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Your Property, Your High-Speed Rail Project, *supra* note 34.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

complaint in eminent domain will then be served on all persons having a property interest in the parcel.¹⁴⁷ The persons served must answer the lawsuit within 30 days.¹⁴⁸ “The purpose of a condemnation trial is to determine the amount of just compensation.”¹⁴⁹ “The trial is usually conducted before a judge and jury.”¹⁵⁰ “Both the Authority and the property owner will have the opportunity to present evidence” in order to establish valuation.¹⁵¹

“The only type of legal evidence that can be used to establish value in eminent domain cases is the opinion of qualified experts and the property owners.”¹⁵² “[T]he general rule in eminent domain actions is that ‘the right to a jury trial. . . goes *only* to the *amount* of compensation.’¹⁵³ “All other questions of fact, or mixed facts and law, are to be tried . . . without reference to a jury.”¹⁵⁴ The California Civil Jury Instructions (CACI) define the rule for Valuation Testimony as follows:

You must decide the value of property based solely on the testimony of the witnesses who have given their opinion of fair market value. You may consider other evidence only to help you understand and weigh the testimony of those witnesses.

You may find the same fair market value testified to by a witness, or you may find a value anywhere between the highest and lowest values stated by the witnesses.

If the witnesses disagreed with one another, you should weigh each opinion against the others based on the reasons given for each opinion, the facts or other matters that each witness relied on, and the witnesses’ qualifications.¹⁵⁵

The jury ultimately determines the amount of compensation available to landowners.¹⁵⁶ The parties may also choose not to have a jury, in those cases the judge will decide the amount of compensation.¹⁵⁷

“A jury hearing a condemnation action cannot disregard the evidence as to value and render a verdict that falls below or exceeds the limits established by the witnesses.”¹⁵⁸ “The trier of fact in an eminent domain action does not make

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Aetna Life & Casualty Co. v. Los Angeles*, 170 Cal. App. 3d 865, 877 (1985).

¹⁵³ *Emeryville Redevelopment v. Harcros Pigments*, 101 Cal.App.4th 1083, 1116 (2002), original italics, internal citations omitted.

¹⁵⁴ *Emeryville Redevelopment v. Harcros Pigments*, 101 Cal. App. 4th.

¹⁵⁵ CACI No. 3515

¹⁵⁶ *Your Property, Your High-Speed Rail Project*, *supra* note 34.

¹⁵⁷ *Id.*

¹⁵⁸ *Aetna*, 170 Cal. App. 3d 865, 877.

a determination of market value based on its opinion.”¹⁵⁹ “Rather, it determines the market value of the property based on the opinions of the witnesses that establish the valuation.”¹⁶⁰

The trier of fact may establish valuation by choosing a figure between the two parties or accept the evidence of any one expert over the other.¹⁶¹ However, evidence will be considered insufficient to support a verdict when, “no reasonable interpretation of the record” supports the figure.¹⁶²

The purpose of the trial is to determine the amount of just compensation.¹⁶³ Usually the trial is conducted before a judge and jury.¹⁶⁴ Both the property owner and Authority will have the opportunity to present evidence of property value.¹⁶⁵ The jury will determine the amount of compensation after being instructed as to the law by the judge.¹⁶⁶ In those cases where the parties choose not to have a jury, the judge will decide the amount of compensation.¹⁶⁷

After trial, “a judgment will be prepared by counsel and signed by the judge.”¹⁶⁸ It states that, “upon payment of the amount of the verdict for the benefit of the private parties having an interest in the property, title will be transferred to public ownership.”¹⁶⁹ “When the Authority makes the payment as required by the judgment, the final order of condemnation is then signed by the judge and recorded with the County Recorder’s office.”¹⁷⁰ Upon recording the final order, the transfer of title is complete.¹⁷¹

B. Land Acquisition Process

The land acquisition process begins after the Department of Transportation has established the desired route.¹⁷² The first step in the acquisition process is notifying impacted property owners of the State’s plan.¹⁷³ The property is then appraised by the HSRA, and an offer is made to the owner.¹⁷⁴ If the parties

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ San Diego Metropolitan Transit Development Bd. v. Cushman (1997) 53 Cal.App.4th 918, 931, internal citations omitted.

¹⁶² *Id.*

¹⁶³ *Your Property, Your High-Speed Rail Project, supra* note 34.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

agree there is a contractual transfer of title.¹⁷⁵ However, if the parties do not agree the state will then proceed with legal action to take the land through eminent domain.¹⁷⁶ A trial is held to decide what amount would justly compensate the landowner for the taken property.¹⁷⁷ When the decision is finalized, title is transferred to the state, and payment is made to the landowner.¹⁷⁸

C. *The Right of Necessity*

The transfer of personal property from a private person to the HSRA is facilitated by a right-of-way agent.¹⁷⁹ The right-of-way agent is assigned to purchase private property and explain the effects of partial acquisition of remaining property when necessary.¹⁸⁰ The Rail Authority hires right-of-way agents to secure property rights on behalf of the Authority.¹⁸¹

Prior to land acquisition, the Rail Authority must file a Resolution of Necessity (RON).¹⁸² A RON is a formal resolution that is used to acquire property before commencing the eminent domain proceeding in court Pursuant to Cal Code Civ Proc § 1245.220.¹⁸³ The RON “must be adopted before the eminent domain action begins in court.”¹⁸⁴

The Rail Authority allocates land through a five-part process following the filing of a RON.¹⁸⁵ This process starts with a survey in which an appraisal map is created, and the surveyor prepares a boundary survey.¹⁸⁶ Next, the Appraisal process begins and the right-of-way agent works with the affected property owner to identify affected utilities and the agent attempts to resolve any conflicts.¹⁸⁷ In addition, the agent addresses any issues of concern regarding the effected parcel that the landowner may have such as, turning radius, severed pipelines, or infestation. Following the Appraisal is the Acquisition,

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Aetna*, 170 Cal. App. 3d 865, 877.

¹⁸² *California Eminent Domain Laws*, US LEGAL,

<https://eminentdomain.uslegal.com/state-laws-on-eminent-domain/california/> (last visited July 3, 2018).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Right-of-Way (ROW) Process*, CALIFORNIA HIGH-SPEED RAIL AUTHORITY, http://www.hsr.ca.gov/docs/programs/private_property/ROW_Process_2014.pdf (last visited July 3, 2018).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

which only begins after approval of the Notice of Determination, during which negotiations take place between the property owner and the right-of-way agents.¹⁸⁸ Finally, there is a relocation process where the right-of-way agent assists the landowner in determining if he or she is eligible for benefits, such as moving related expenses, or cost differentials.¹⁸⁹ Although the HSRA's appraisal process is widely used to determine fair market value, a number of factors may still affect the integrity of the final price the landowner receives.¹⁹⁰

D. Appraisal Method

“There are three methods of calculating fair market value in eminent domain proceedings; the market data approach, the income approach, and the replacement cost method.”¹⁹¹ The market data approach determines fair market value by comparing the parcel in question with comparable properties that have been recently sold.¹⁹² The income approach, takes into consideration “the amount of income the property produces or is able to produce.”¹⁹³ Finally, the replacement cost method looks into the “cost of acquiring comparable land and improvements minus any amount of applicable depreciation.”¹⁹⁴

The most common appraisal method used for agricultural lands is the market data approach.¹⁹⁵ Here, the subject property is compared to recently sold comparable properties.¹⁹⁶ A potential issue with this method is that no two properties are the same.¹⁹⁷ Therefore, many factors need to be taken into consideration such as location, property size, and when the comparable property was sold.¹⁹⁸

Another potential issue with the market data approach is the appraisers.¹⁹⁹ In the Central Valley, farmers are particularly concerned with appraisals from out of state appraisers.²⁰⁰ The out of state appraisers would not be qualified in

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Interview with William Brewer, *supra* note 15.

¹⁹¹ Nicea Bates, *Just Compensation Or Just Plain Unfair: The Effect Of Eminent Domain On California Dairy Farmers*, 20 SAN JOAQUIN AGRIC. L. REV. 59, 69-70 (2011).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Interview with William Brewer, *supra* note 15.

¹⁹⁶ *supra* note 182.

¹⁹⁷ Interview with William Brewer, *supra* note 15.

¹⁹⁸ *Market Data Approach*, PREAGENT, <https://www.preagent.com/article/market-data-approach> (last visited July 3, 2018).

¹⁹⁹ Interview with Michael Dias, *supra* note 5.

²⁰⁰ *Id.*

the agricultural appraisal process.²⁰¹ They do not understand cropping patterns and potential water issues local farmers face.²⁰² A solution to this dilemma would be to bring in appraisers from the central valley.

Many of the appraisers used to determine valuation of agricultural land in the central valley have been appraisal firms from Texas.²⁰³ The comparable properties being used to establish valuation from some of these appraisers are not similar; for instance, an appraisal firm established the valuation for a parcel in Hanford using comparable properties from Porterville and Madera.²⁰⁴ This is problematic for a number of reasons, the location of the parcel is not being taken into consideration, so farmland that is in a rural area of Hanford, would get a similar valuation to a parcel near downtown.²⁰⁵ In other cases, there are properties that do not have a comparable equivalent, making pricing those properties that much more difficult.²⁰⁶ For example, downtown Fresno is home to ValPrint, a 60 year old print and design firm. The firm was offered \$430,000 for the warehouse, which the owner believes to be worth in excess of \$700,000.²⁰⁷ However, the biggest concern is finding a comparable property, because the HSR and the owner are so off in price.²⁰⁸ In order to sustain the business the owner will likely have to incur additional debt to replace the property.²⁰⁹

Another problem that is facing both the HSRA and landowners is the initial appraisal. Typically, the Authority sends a letter requesting a date for appraisal, the problem that farmers are facing is that they are only provided with limited dates, that often conflict with harvest season.²¹⁰ The result of which is appraisers coming to the property and appraising without the landowners. These “flash appraisals” are problematic because they deprive landowners the opportunity to provide more information on factors they believe they should be compensated for.²¹¹ In one instance, a couple from Kings County witnessed a truck pull up on their land and take pictures of the

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Ezra D. Romero, *High Speed Rail Forces Out Longtime Fresno Businesses*, VALLEY PUBLIC RADIO (Sept. 24, 2013), <http://kvpr.org/post/high-speed-rail-forces-out-longtime-fresno-businesses>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Interview with Michael Dias, *supra* note 5.

²¹⁰ Seth Nidever, *Rushing alleged in hsr appraisal process*, THE SENTINEL (Jan. 27, 2015), http://hanfordsentinel.com/news/in_focus/high_speed_rail/rushing-alleged-in-hsr-appraisal-process/article_7e1ab730-34c5-50cd-b4a6-b7032e224a6b.html.

²¹¹ Telephone Interview with Karen Massie, *supra* note 30.

property, when the owner asked whether the agent needed permission to assess the property the agent replied, “no, I don’t need access to your property.”²¹²

Flash appraisals are problematic because they result in low-ball offers.²¹³ Although the Rail Authority does not believe that flash appraisals are taking place, they do admit that there is an issue, and landowners have not been replying to the initial requests by the authority to do conduct supervised appraisals.²¹⁴ Despite the tension between in acquisition, the HSRA does have methods to the ensure smooth transition of property between the two parties.

V. RECOMMENDATIONS

The HSRA has asserted that in cases in which the farmer believes that the economic value of the parcel is diminished, they will buyout the farmer, or sell the remainder to neighboring landowners.²¹⁵ Many farmers in Kings County do not believe they are receiving fair market value for the remainders and that flash appraisals are depriving them of any economic value that their land may still possess.²¹⁶ This has resulted in a standstill between farmers and the rail authority in the Central Valley.²¹⁷ Although the situation may seem overwhelming, there are steps that can be taken to ease the tension between the HSRA and landowners.

A. Better Land Acquisition Process

In order to ensure that both the HSR and farmers are on better terms moving forward, there needs to be more transparency between the two parties.²¹⁸ The HSR uses a process called protection acquisition, in which the authority determines where it is financially feasible to purchase a property that is about to be developed to save costs and protect it for the project.²¹⁹ This protection can only occur after a draft environmental document has been circulated.²²⁰

The benefit of protection acquisition is that it allows the HSR to acquire the land sooner, resulting in more negotiating time, and allowing the project to continue without later delays.²²¹ The problem with protection acquisition is

²¹² Jeffrey Hess, *Central Valley Residents Say High Speed Rail Is Running Them Over*, VALLEY PUBLIC RADIO (April 7, 2015), <http://kvpr.org/post/central-valley-residents-say-high-speed-rail-running-them-over>.

²¹³ Telephone Interview with Karen Massie, *supra* note 30.

²¹⁴ Nidever, *supra* note 210.

²¹⁵ Telephone Interview with Don Grebe, *supra* note 56.

²¹⁶ Telephone Interview with Karen Massie, *supra* note 30.

²¹⁷ *Id.*

²¹⁸ Interview with Michael Dias, *supra* note 5.

²¹⁹ Telephone Interview with Don Grebe, *supra* note 56.

²²⁰ *Id.*

²²¹ *Id.*

that there is no definite time in which the land that is being taken will be developed.²²² This results in a number of problems of the neighboring landowners.²²³

Early acquisition of farmland has resulted in snake and insect infestation by snakes and insects, as the Authority fails upkeep on taken property.²²⁴

Both the Authority and landowners would benefit if the HSR changed its acquisition methods and started to acquire land as development approaches, rather than obtaining the land all at once through protection acquisition.²²⁵ This would allow farmers to potentially farm for an additional harvest season, and would prevent taken land from turning into neglected parcels that often turn into dumpsites.²²⁶ The creation of dumpsites may impact the value of surrounding parcels in later stages of acquisition, as these dumpsites are very attractive breeding grounds for snakes and insects.²²⁷ This is just one of many factors that may have an affect on the valuation of property.²²⁸

B. Improved Appraisal Methods

Another key problem that is being presented in the acquisition process is the appraisal amounts that are being offered to farmers.²²⁹ It would be much more beneficial to both parties if local appraisers were being employed exclusively for appraisals on local farmland.²³⁰ The Rail Authority has asserted that all high-speed rail appraisers (regardless of where they make their home) are certified by the State of California and must follow the state and federal rules and regulations regarding property acquisition.²³¹ However, the fact that the appraisers are certified by the State of California does not combat their knowledge on local topography.²³² In many cases, appraisers from Los Angeles and Texas are being used to appraise farmland in Fresno.²³³ This is problematic, because these appraisers are not familiar with local topography such as, cropping patterns, water issues in the valley.²³⁴ In some instances, unrelated comps are being used to establish valuation, for instance a property in Madera or Porterville may be used to establish the valuation of a property

²²² Interview with William Brewer, *supra* note 15.

²²³ *Id.*

²²⁴ Interview with Michael Dias, *supra* note 5.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Telephone Interview with Karen Massie, *supra* note 30.

²³⁰ *Id.*

²³¹ Telephone Interview with Don Grebe, *supra* note 56.

²³² Interview with Michael Dias, *supra* note 5.

²³³ *Id.*

²³⁴ *Id.*

in Hanford.²³⁵ Some farmers argue that initial offers from the Rail Authority are substantially lower than fair market value.²³⁶ For example, the Rail Authority offered a farmer in the Central Valley \$29,000 per acre, the net income produced by the orchards is \$8,000 a year per acre.²³⁷ The farmer's financial consultants estimate a market value of \$60,000 per acre.²³⁸ This means the Rail Authority's initial offer is less than half of what the farmer estimates his property at.²³⁹

A key method that landowners can use to combat insufficient appraisals is by hiring their own appraisers.²⁴⁰ According to Don Grebe, the authority's director of real property, the Authority for up to \$5,000 for doing a separate appraisal can compensate landowners.²⁴¹ This will substantially turn the tide in the landowners favor, because many appraisers in the central valley are refusing to work for the Authority and would be more than willing to do appraisals on behalf of landowners.²⁴² This would benefit landowners because local appraisers are familiar with local geography and will take into account additional factors that out of state appraisers may not such as well access, severed pipelines, are re-lasering parcels.²⁴³ More often than not the landowner receives substantially more for their land if they get a second appraisal than they would had they taken the initial offer by the state.²⁴⁴ A second appraisal creates more transparency, because more factors that impact the value of the land will be identified and therefore create a more just offer to landowners.²⁴⁵

VI. CONCLUSION

Since the first round of appraisals, the relationship between farmers in the Central Valley and the HSR Authority has come a long way. Many of the issues farmers have had with the takings, such as severed pipelines, the turning radius for farm equipment, and access to well water, are now being compensated for. However, new factors are now beginning to be arise as the acquisition process continues. These new concerns, such as neglect of ascertained parcels, and increased commute time for bisected parcels, are not

²³⁵ Telephone Interview with Karen Massie, *supra* note 30.

²³⁶ Ralph Vartabedian, *Ready to fight: Some growers unwilling to lose land for bullet train*, LOS ANGELES TIMES (2015), <http://www.latimes.com/local/politics/la-me-bullet-land-take-20150314-story.html> (last visited Nov. 13, 2017).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Nidever, *supra* note 210.

²⁴¹ *Id.*

²⁴² Interview with Michael Dias, *supra* note 5.

²⁴³ *Id.*

²⁴⁴ Interview with William Brewer, *supra* note 15.

²⁴⁵ Interview with Michael Dias, *supra* note 5.

being compensated for. The common theme remains in effect, as most landowners do not realize what factors should be taken into consideration in regard to just compensation until after the parcel has been taken. The burden remains on the landowner to assert what damages to their land will occur and must be compensated for. It is important for landowners to employ their own appraisers in order to aid the government in maintaining transparency. This will close the gap in inaccurate offers and allow landowners an opportunity to attain the best possible price for their land.

IQBAL SINGH BAINS²⁴⁶

²⁴⁶ J.D. Candidate, San Joaquin College of Law, 2018. I would like to extend my thanks to all the interviewees in this piece for taking the time to answer my many questions. To Andy Kucera for taking on the rigorous task of being my faculty advisor. To John Soares, for putting up with my many phone calls and texts, and for coaching me along the way. Finally, I would like to extend my deepest gratitude to my wife Sangeeta and the rest of my family for standing with me throughout the many hours and long weekends it took to complete this Comment.