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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 36284

**SEVEN COUNTY INFRASTRUCTURE COALITION—
CONSTRUCTION AND OPERATION—IN UTAH, CARBON,
DUCHESNE, AND UINTAH COUNTIES, UT**

**PETITIONER'S RESPONSE TO REPLIES TO
PETITION FOR EXEMPTION**

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Dated: July 21, 2020

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The Seven County Infrastructure Coalition (the “Coalition”), a public entity comprised of seven member counties in Utah, is seeking to construct and operate a new freight rail line that would connect shippers in the isolated Uinta Basin to the national rail network (the “Uinta Basin Railway” or “Project”).¹ These shippers are currently solely dependent on costly trucking to transport goods in and out of the Basin.² The Uinta Basin Railway will provide an alternative, cheaper means of surface transportation, furthering the goals of the Rail Transportation Policy in 49 U.S.C. § 10101.

¹ The Coalition has entered into a preliminary Memorandum of Understanding to develop the project with private partners and the Ute Indian Tribe of the Uintah and Ouray Reservation (“Ute Indian Tribe”). *See* Seven County Infrastructure Coalition, Petition for Exemption, STB Finance Docket No. 36284, at 6-7 (May 29, 2020) (“Petition for Exemption”).

² As noted in the Petition for Exemption, all goods produced or consumed in the Basin must be transported by trucks on two-lane highways that cross high mountain passes, with the potential for disruptions and public safety issues especially during inclement weather. Petition for Exemption at 13.

Opponents³ of the Project do not seriously dispute that the Project meets the exemption criteria in 49 U.S.C. § 10502. In fact, they do not appear to be concerned with the transportation merits of the Project at all. The replies to the Petition for Exemption make clear that these parties oppose the Project for environmental reasons, including concerns over a potential increase in oil production in the Uinta Basin and supposed impacts of the rail line to property owners. They therefore seek to muddy the waters and convince the Board to require a full application by attacking the Project's financial viability and raising a number of other issues that do not preclude an exemption under section 10502. If accepted, these arguments would read the exemption process out of the ICC Termination Act (ICCTA) circumventing the Congressional mandate to reduce regulatory barriers and streamline the approval process wherever possible.

Ultimately, the Uinta Basin Railway is a straightforward freight rail construction project, like the many projects for which the Board has previously granted exemptions. The Board has a well-established precedent of exempting new rail construction projects that are consistent with the rail transportation policy in 49 U.S.C. § 10101 and do not present any concerns with regard to abuse of market power. None of Opponents' arguments presents a compelling reason for the Board to depart

³ "Opponents" include the Center for Biological Diversity, the Argyle Wilderness Preservation Alliance, and individual landowners in the Argyle Canyon, Avintaquin Canyon, and Indian Canyon areas. The Coalition has been informed that the Center for Biological Diversity submitted to the Board a flash drive of all references cited in its Reply as a supplement to its filing. The Coalition has yet to receive copies of these documents as required by 49 C.F.R. § 1104.12.

from this precedent. Therefore, the Board should reject Opponents' arguments, exempt the Project from the prior approval requirements in 49 U.S.C. § 10901, and conditionally approve the Project pending completion of the environmental review process.

I. The proposed rail line meets the criteria for an exemption from the prior approval requirements of 49 U.S.C. § 10901.

The Board “shall” grant an exemption from the prior approval requirements of section 10901 when it finds that a full application is not necessary to carry out the rail transportation policy (“RTP”) goals in 49 U.S.C. § 10101 and either (1) the transaction or service is of limited scope or (2) an application is not needed to protect shippers from an abuse of market power.⁴ Opponents urge the Board to reject the Coalition’s Petition for Exemption, but they have raised no serious question as to whether the proposed Uinta Basin Railway meets these criteria. Rather, they rely on a series of arguments that should not affect the Board’s consideration of the exemption criteria. Because the Petition demonstrates the criteria in section 10502 have been met, the Board should exempt the construction and operation of the Uinta Basin Railway from the prior approval requirements of section 10901.

A. The Project is consistent with the rail transportation policy in section 10901.

In its Petition for Exemption, the Coalition identified the many ways in which this project is consistent with the RTP.⁵ The Board need not consider each and every

⁴ 49 U.S.C. § 10502.

⁵ See Petition for Exemption at 21-24.

provision in the RTP, but instead “it will look to those portions of the RTP that are relevant or pertinent to the underlying statutory provision from which exemption is sought—here, 49 U.S.C. § 10901. . . . Otherwise, the Board would be ‘faced with the impossible task of reconciling a variety of different objectives’ in the RTP.”⁶

In *Six County Association of Governments*—a case strikingly similar to that presented here—the Board determined that the construction and operation of a new freight rail line into an isolated area of Utah promoted the RTP goals in sections 10101(1), (2), (4), (5), and (7).⁷ Specifically, the Board found:

Granting the requested exemption will provide an alternative rail service option to shippers in an isolated area of Utah and increase competition [49 U.S.C. 10101(1) and (4)]. Exempting the proposed construction and operation will reduce the need for Federal regulation, ensure the development of a sound transportation system with effective competition among carriers, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)].⁸

The same reasoning applies equally to the Uinta Basin Railway, and the Coalition addressed each of these RTP objectives in its Petition.

Tellingly, none of the Opponents dispute that the Project would further these RTP objectives. Instead, they argue that the Project presents public safety concerns

⁶ See *California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare and Kern Counties, CA*, STB Finance Docket No. 35724 (Sub-No. 1), at 14 (served Aug. 12, 2014) (“*CA High-Speed Rail (Fresno-Bakersfield)*”) (quoting *Alaska Survival v. STB*, 705 F.3d 1073, 1083 (9th Cir. 2013)).

⁷ *Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Levan and Selina, UT*, STB Finance Docket No. 34075, at 3 (served Oct. 26, 2001).

⁸ *Id.*

and that the Board should find that these concerns outweigh the other RTP objectives.⁹ But the rail line’s potential impact on public health and safety is being evaluated fully as part of the ongoing environmental review process, which began in 2019, and will be mitigated as appropriate.¹⁰ The Board has consistently held that such issues do not outweigh the other factors discussed above or justify a denial of a petition for exemption.¹¹

Opponents also claim that the Project is so controversial it must proceed through the full application process under section 10901.¹² But the controversial nature of a project does not preclude the use of the exemption process.¹³ Indeed, the Board has frequently approved construction exemptions for “controversial” projects.¹⁴

⁹ See, e.g., Argyle Wilderness Preservation Alliance, Reply in Opposition to Petition for Exemption, STB Finance Docket No. 36284, at 13 (July 7, 2020) (“Argyle Reply”).

¹⁰ See *CA High-Speed Rail (Fresno-Bakersfield)* at 13-14; *Mid-West Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will Cty., IL*, STB Finance Docket No. 34060, at 9 (served Mar. 21, 2002) (“*Mid-West Generation*”).

¹¹ See *id.*

¹² Center for Biological Diversity, Reply to Petition for Exemption, STB Finance Docket No. 36284, at 33 (July 7, 2020) (“CBD Reply”); Argyle Reply at 3-4.

¹³ Argyle Wilderness Preservation Alliance argues that a petition for exemption is appropriate only in uncontested or noncontroversial proceedings. But the case they cite to for this proposition concerns a *notice* of exemption. The Board has recognized that the timing concerns of a notice of exemption are not raised in a petition for exemption. See, e.g., *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, MD*, STB Docket No. AB 55 (Sub-No. 659X), at 4 (served Dec. 30, 2010).

¹⁴ See, e.g., *CA High-Speed Rail Authority—Construction Exemption—In Merced, Madera and Fresno Counties, CA*, STB Finance Docket No. 35724, at 18 (served June 13, 2013) (“*CA High-Speed Rail (Merced)*”) (citing *Alaska Survival*, 705 F.3d at 1082; *Mo. Mining Inc. v. ICC*, 33 F.3d 980, 981, 984-85 (8th Cir. 1994); *Ameren Energy Generation Co.—Construction & Operation Exemption—in Coffeen & Walshville, Ill.*, STB Finance Docket No. 34435 (served Feb. 17, 2006); *DesertXpress Enters.—*

Under section 10502, a project that meets the exemption criteria must receive an exemption, regardless of “controversy.” And none of opponents’ arguments shows that the exemption criteria are absent here.

Because the project is consistent with the RTP and no one claims that an application is needed to protect shippers from an abuse of market power, both criteria for an exemption under section 10502 are met. When that happens, the statute mandates that the Board “shall” grant the exemption.¹⁵

B. The environmental and socioeconomic issues raised by Opponents are being addressed through the Board’s ongoing environmental review process.

Opponents claim that the Board should reject the Petition for Exemption and require a full application due to what they claim are “significant environmental and socioeconomic issues.”¹⁶ Various landowners also contend that a full application should be required given the serious impact the rail line will have on their land.¹⁷ But potential impacts from the rail line have not yet been determined. Rather, these issues will be appropriately considered during the Board’s ongoing environmental

Construction & Operation Exemption—in Victorville, Cal., STB Finance Docket No. 35544 (served Oct. 25, 2011) (“*DesertXpress*”).

¹⁵ 49 U.S.C. § 10502.

¹⁶ CBD Reply at 33; *see also* Argyle Reply at 14.

¹⁷ Argyle Reply at 3–4; *see also* Comment of Alan H. Robinson, STB Finance Docket No. 36284 (July 16, 2020); Comment of Powell T. Wood, STB Finance Docket No. 36284 (July 8, 2020). None of the property owners who submitted comments specifically claim that their property is crossed by the rail line or will be within the Project’s Area of Potential Effects (“APE”). Of these landowners, the Coalition was unable to identify any whose property is within the APE.

review process,¹⁸ which is not affected by whether a construction project proceeds through the exemption process under section 10502 or under a full application in section 10901.¹⁹ Because the full application process will not provide any additional environmental information, none of these concerns justify precluding the Coalition's use of the exemption process.

C. There are no serious questions regarding the financial viability of the Project.

Opponents claim that the STB should reject the Petition for Exemption and require a full application because the Coalition has not provided enough information showing the financial viability of the project.²⁰ But “neither § 10502 nor the STB's implementing regulations indicate that an exemption proceeding is improper when a project's financial viability is questioned.”²¹ Furthermore, Opponents' concerns over the Project's financial viability are not based on facts, but rather their own speculation.

1. Financial viability is not a condition of an exemption under § 10502.

Board precedent is clear that evidence of a project's financial viability is not a necessary component of a petition for exemption.²² There is “nothing in the language

¹⁸ The Board's Office of Environmental Analysis has issued a notice of intent to prepare an environmental impact statement—the highest level of review under the National Environmental Policy Act. *See* 84 Fed. Reg. 28611 (June 19, 2019).

¹⁹ *CA High-Speed Rail (Merced)* at 11.

²⁰ CBD Reply at 2-4; Argyle Reply at 4-7.

²¹ *Alaska Survival*, 705 F.3d at 1082.

²² *See Alaska Railroad Corp.—Construction and Operation Exemption—A Rail Line Extension to Port MacKenzie, AK*, STB Finance Docket No. 35095, at 15 (served Nov.

of § 10502 to suggest that an exemption proceeding is necessarily improper when the viability of the proposed rail line is questioned.”²³ The Board has explained:

The Board’s grant of authority to construct a line (whether under § 10901 or by exemption under § 10502) is permissive, not mandatory—that is, the Board does not require that an approved line be built. As a result, the Board has repeatedly recognized that the decision to go forward with an approved project ultimately is in the hands of the applicant and its potential investors (whether public or private) and not this agency.²⁴

The Board has thus properly rejected objections to prior rail construction projects based upon the lack of finalized financing arrangements.²⁵

This is particularly true for cases involving private financing. “[T]he Board has typically declined to undertake a rigorous analysis of future profitability because the financial marketplace ultimately determines the viability of any rail line project and whether an authorized rail line is built.”²⁶ “[I]nvestors rather than the Board will

21, 2011); *Mid States Coalition for Progress v. S.T.B.*, 345 F.3d 520, 552 (8th Cir. 2003); *CA High-Speed Rail (Merced)* at 18; *DM&E Powder River Basin*, 3 S.T.B. 847, 892 (1998).

²³ *CA High-Speed Rail (Fresno-Bakersfield)* at 10.

²⁴ *Id.*

²⁵ See *DM&E Powder River Basin*, 3 S.T.B. at 892 (finding that “the ultimate determination of the financial viability of the project will be made by the financial markets”); see also *Mid States Coalition for Progress*, 345 F.3d at 552 (“we agree with the Board that the ultimate test of financial fitness will come when the railroad seeks financing”).

²⁶ *CA High Speed Rail (Merced)* at 20 (citing *Mid States*, 345 F.3d at 552).

determine if a proposed line will be financially viable.”²⁷ The U.S. Court of Appeals for the Eighth Circuit has specifically endorsed that logic.²⁸

Opponents rely heavily on the unusual *Ozark Mountain* proceeding, where the ICC revoked a conditional exemption initially granted to Ozark Mountain to run a passenger excursion train in Branson, Missouri and northern Arkansas. They argue that “the exemption process is not appropriate where there is no evidence of financial ability to complete the track construction.”²⁹ But *Ozark Mountain* is a unique case, in which the ICC revoked an exemption because it found the petitioner was not forthcoming with the Commission and refused to provide all of the financial and environmental information that the agency requested. Ultimately, the Board required an application because the project proponent was an entirely unknown entity that had provided no information on its investors or how it proposed to finance the construction.

The Board’s recent decision in *Texas Central* denying a petition for exemption in favor of an application is equally inapplicable here. In that case, the Board focused primarily on its jurisdiction over the project, then stated that an application was warranted due to “the magnitude of the project, the questions about increased costs and funding sources, the substantial public interest, and the potential impact on

²⁷ *Id.*

²⁸ *Mid States Coalition for Progress v. S.T.B.*, 345 F.3d at 552 (“we agree with the Board that the ultimate test of financial fitness will come when the railroad seeks financing”).

²⁹ Argyle Reply at 4 (citing to *Ozark Mountain Railroad–Construction Exemption*, 1995 WL 561990, at * 4 (S.T.B. Dec. 15, 1994)); see also CBD Reply at 3-4.

numerous local landowners.” In particular, the STB noted that commenters had raised significant questions about “the increasing projected cost of the project and the funding sources for these ballooning costs and the applicant’s potential use of a significant amount of federal funds.”³⁰

Neither *Texas Central* nor *Ozark Mountain* stands for the proposition that a Petition for Exemption must provide evidence of financial viability. Each turned on the specific combination of facts then before the Board—facts that are not present here. The rule is still that there is “nothing in the language of § 10502 to suggest that an exemption proceeding is necessarily improper when the viability of the proposed rail line is questioned.”³¹

2. The Uinta Basin Railway presents no unique or compelling factors that justify a full application.

The facts here are notably different from both *Ozark* and *Texas Central*. First, *Ozark* and *Texas Central* concerned passenger rail lines, which raise different considerations than freight rail lines. Most relevant is that passenger rail lines serve the public, whereas freight rail lines serve shippers. The chief purpose of reviewing the financial soundness of proposals under section 10901 is to protect future

³⁰ Opponents also urge the Board to follow the dissent in *California High-Speed Rail Authority—Construction Exemption—in Merced, Madera, and Fresno County*, arguing that “Chairman Begeman has voted against use of petition for exemption procedure where there is insufficient evidence of financial ability to fund a track construction project to completion.” Argyle Reply at 5. But Opponents stretch the dissent too far. Chairman Begeman did not indicate that detailed financial scrutiny is required in *all* cases. Rather, when fairly read, Chairman Begeman stated that she believed a full application should be required in that particular case due to the “*significant federal taxpayer dollars at stake*.” *CA High Speed Rail (Merced)* at 29.

³¹ *CA High-Speed Rail (Fresno-Bakersfield)* at 10.

customers who may rely on the new rail service.³² Here, none of the Opponents argue that detailed scrutiny under section 10901 is needed to protect shippers—and in fact, no shippers are at risk of harm from the Project.

Second, the Coalition is a known, public entity that has been cooperating with the Board and has responded to all information requests from the STB’s Office of Environmental Analysis. Unlike the applicant in *Ozark*, the Coalition has been forthcoming with the Board about its plans for financing the project through a private partner, at present Drexel Hamilton Infrastructure Partners, an established independent infrastructure investment company that is successfully developing and financing projects across the United States, including the \$2.5 billion Plaquemines Liquid Terminal, which will be the largest crude oil export port in the Western Hemisphere once constructed.³³ The Coalition’s other private partners are also well known, including Rio Grande Pacific Corporation, an experienced railroad operations provider.³⁴

Third, the Uinta Basin Railway is not faced with allegations of “ballooning” costs—just the opposite. While Opponents claim that the Coalition’s cost projections

³² See *Norfolk Southern Corp.—Construction and Operation, Indiana Cty., PA*, STB Finance Docket No. 33928, at 6 (served May 15, 2003).

³³ Petition for Exemption at 6; see also *US to Offer 85% of Liquids Storage Capacity Growth By 2023*, Kallanish Energy Daily News & Analysis (Oct. 7, 2019) <https://www.kallanishenergy.com/2019/10/07/us-to-contribute-85-of-north-americas-liquids-storage-capacity-growth-by-2023/>; *New \$2.5 Billion Oil Export Terminal Planned for Plaquemines Parish* (Aug. 29, 2018, 9:20 AM) https://www.nola.com/news/business/article_e394316a-da2c-557a-a33d-75a3c09ec1f3.html.

³⁴ See Petition for Exemption at 7.

are artificially low,³⁵ they do not offer an alternative cost for the rail line or provide any specific rationale for their claim. Instead they point to a previous study by the Utah Department of Transportation (“UDOT”) relating to a potential rail line into the Uinta Basin, but elements of that UDOT project were drastically different than the rail line proposed here and resulted in much higher cost estimates. For example, UDOT’s rail line was being pursued in conjunction with the reconstruction of an existing highway. In addition, the alignment studied would have been located between a steep bluff and the Strawberry river, requiring an extensively high and long wall.³⁶ The two projects are thus not an apples-to-apples comparison.

Fourth, as stated in the Petition for Exemption, the project will be *privately* financed.³⁷ Billions of federal tax payer dollars are not at stake here. Opponents’ speculations otherwise are not based on any facts. The Center for Biological Diversity makes much of the fact that the Coalition has bonding authority and hypothesizes that the Coalition intends to issue municipal bonds for the Project.³⁸ But the Coalition’s bonding authority does not put federal funds at issue. And, importantly,

³⁵ CBD Reply at 9; Argyle Reply, Appendix 1 at 3-4.

³⁶ See Utah Department of Transportation, Uinta Basin Railroad Feasibility Study, at 17 (2015) (“2015 UDOT Study”), available at http://www.uintabasinrailwayeis.com/documents/UDOT_TM_Uinta_Basin_Summary_Report.pdf. The Coalition’s proposed rail line avoids this location by crossing trust lands of the Ute Indian Tribe.

³⁷ Petition for Exemption at 6.

³⁸ CBD Reply at 2-3, 12.

it ensures that there is no risk of the Coalition starting construction of the rail line but not being able to complete the Project and provide service.³⁹

Opponents harp on the fact that the details of the financing are not final yet, but full financing of a project at this stage in the process would be highly unusual. The financial markets depend upon regulatory certainty in making investment decisions and therefore are unlikely to unconditionally commit large amounts of money to projects at this stage. This is one reason that the Coalition requested a conditional grant of exemption. The increased regulatory certainty that a conditional approval provides would facilitate faster financing, thereby fulfilling the purposes of the recent Executive Order on Regulatory Relief to Support Economic Recovery.⁴⁰

Ultimately, the Opponents' position boils down to this: a project cannot qualify for an exemption unless it has full, committed financing in place. Such a position not only is inconsistent with Board precedent but also is contrary to the statutory presumption created by Congress that new rail projects are in the public interest and that exemptions should be pursued wherever possible.⁴¹ The Uinta Basin Railway is

³⁹ See *Tongue River R.R.—Construction & Operation—W. Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), at 14 (served Oct. 9, 2007).

⁴⁰ See Petition for Exemption at 26-27.

⁴¹ See, e.g., *DesertXpress*, at 3; *Alaska Railroad Corp. —Construction and Operation Exemption—Rail Line between North Pole and Delta Junction, AK* (“*Alaska Railroad Construction*”), STB Finance Docket No. 34658, at 5–6 (Jan. 6, 2010); see also *Am. Trucking Assocs. v. ICC*, 656 F.2d 1115, 1119 (5th Cir. Unit A 1981) (explaining that the ICC was charged with the responsibility of actively pursuing exemptions for transportation and services that comply with the section's standards); H.R. Conf. Rep. No. 96-1430, at 105 (1980) (House Report on Staggers Act explaining that the ICC was charged with removing “as many as possible of the Commission’s restrictions”).

a straightforward rail construction project that meets the rail exemption criteria. There are no circumstances that justify straying from well-established Board precedent in this case.

II. Demonstrating a public need for the Project is not a necessary condition of Board approval.

Opponents' arguments suggesting that there is no public need for rail line are irrelevant to the Board's consideration of the Petition for Exemption. ICCTA does not require a project proponent to demonstrate a public need for a new rail line.⁴² The Coalition therefore does not have to show insufficient surface transportation service in the Basin or shipper support for its proposal.⁴³

Nonetheless, the Coalition's Petition establishes a clear public need for the Uinta Basin Railway.⁴⁴ The Uinta Basin is isolated from the national rail network, meaning that shippers within the Basin must rely solely on trucking—and the high costs, limited highway capacity, and public safety concerns associated with trucking in and out of the Basin—to meet their transportation needs. The proposed rail line will provide an alternative, cheaper method of transportation, giving shippers in the Basin the opportunity to enter markets they currently cannot access due to cost

⁴² See *Illinois Central R.R. Co.—Construction and Operation Exemption—In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877, at 2 (served May 25, 2001) (“Neither under the exemption criteria of section 10502 nor under the prior approval requirements of section 10901 is there a requirement of a showing of public need for the facilities proposed to be constructed.”).

⁴³ *Id.*

⁴⁴ Petition for Exemption at 12-18.

constraints and the ability to import materials into the Basin at a more economical cost.⁴⁵

This need is reinforced by the ample industry support for the Project. For example, Enefit American Oil, an oil shale development company operating in the Uinta Basin, submitted a letter to the Board's Office of Environmental Analysis stating that the Uinta Basin Railway "would provide a valuable means to transport product oil to market and to move equipment and other materials associated with an oil shale industry into the region in a safe, efficient, and environmentally responsible manner."⁴⁶ The Utah Petroleum Association, Utah Royalty Owners Association, National Oil Shale Association, and Western Energy Alliance have also expressed support for the Project.⁴⁷ As a common carrier rail line, the Uinta Basin Railway is expected to transport other goods, such as gilsonite, frac sand, steel pipe, cement, fertilizer, animal feed, hay, lumber, and building products and industrial materials.⁴⁸

⁴⁵ A 2015 Utah Department of Transportation study found that the lower cost of rail transportation means that "a producer can transport a commodity 4.3 times farther by rail than by truck for the same cost." 2015 UDOT Study at 7.

⁴⁶ Letter from Ryan Clerico, CEO of Enefit American Oil, to Joshua Wayland, STB Office of Environmental Analysis (July 30, 2019).

⁴⁷ Letter from Utah Petroleum Association to Joshua Wayland, STB Office of Environmental Analysis (July 30, 2019); Letter from Utah Royalty Owners Association to STB Office of Environmental Analysis (July 18, 2019); Letter from National Oil Shale Association to Joshua Wayland, STB Office of Environmental Analysis (Sept. 2, 2019); Letter from Western Energy Alliance to Joshua Wayland, STB Office of Environmental Analysis (Sept. 3, 2019).

⁴⁸ See R.L Banks & Associates, Pre-Feasibility Study of a Prospective Railroad Connecting the Uinta Basin to the National Rail Network, at 17-28 (Aug. 9, 2019) ("R.L. Banks Study") (the R.L. Banks Study was provided to the STB's Office of Environmental Analysis on August 30, 2019); *see also* Seven County Infrastructure

Ignoring this clear support, Opponents argue that there must be no need for the Uinta Basin Railway because no rail line has yet been built.⁴⁹ But this is a circular argument, which taken to its logical conclusion would mean that no rail lines are needed anywhere if they have not already been built. A need is not eliminated by the historical challenges and constraints associated with meeting that need, such as the mountainous terrain surrounding the Basin. The Coalition has spent years studying a rail line into the Basin and has determined that, with the appropriate route, it is in fact feasible and the needs of the Uinta Basin can finally be met.

Finally, Opponents' arguments relating to the price of oil miss the point.⁵⁰ The need for a rail line cannot be determined based on the price of oil at specific point in time. Oil markets are historically volatile, and prices are expected to rise and fall.⁵¹ Notably, Opponents do not contest that a rail connection would provide lower transportation costs than trucking. The fact remains, these lower costs will allow oil producers and other industries in the Basin an opportunity to compete in the national and worldwide markets given appropriate conditions. This is something that trucking simply cannot do.

Coalition Response to OEA's September 25, 2019 Information Request No. 2, at 1-2 (Oct. 10, 2019).

⁴⁹ Argyle Reply at 7.

⁵⁰ *Id.* at 8; CBD Reply at 2.

⁵¹ R.L. Banks Study at 14.

III. Questions of state law are not matters for consideration by the Board.

Opponents claim that “greater scrutiny” of the Project is needed due to “significant controversy” over the previously-allocated public funds for the Project’s regulatory review process. Specifically, they allege that the Coalition’s receipt of funds from the Utah Permanent Community Impact Fund Board (“CIB”) was improper under state law.⁵² They also argue that the Coalition did not follow standard procurement practices when selecting Drexel Hamilton as its private development partner and has failed to involve the public in development of the railway.⁵³

To be clear, the Coalition did not misuse CIB funds or improperly select Drexel Hamilton as its private developer. The CIB Board carefully scrutinized the rail project, not once but twice, before electing to fund its planning. The CIB also reviews and approves all rail expenditures by the Coalition to verify compliance. The Coalition answers to Utah State officials who are tasked with and are in the best position to oversee the proper expenditure of state funds. Furthermore, the Coalition is not prioritizing private oil and gas interests over the interests of its member counties. The Coalition’s Board of Directors is comprised of a county commissioner from each of its member counties. As county commissioners, the Board members are elected by and represent the constituents of their respective counties. The notion that the Coalition therefore represents private oil and gas interests is patently false.

⁵² CBD Reply at 13.

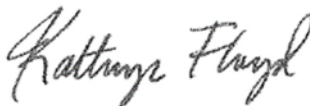
⁵³ *Id.* at 15.

In any case, the Coalition's use of CIB funds and the process used for selecting Drexel Hamilton are questions of state law and have no bearing whatsoever on the STB's statutory criteria for granting a petition for exemption or even the full application process.⁵⁴ These are not matters for consideration by the Board.⁵⁵

CONCLUSION

For the forgoing reasons and for the reasons in the Coalition's Petition for Exemption, the Board should grant an exemption from the prior approval requirements of section 10901 for the construction and operation of the Uinta Basin Railway and conditionally approve the Project pending completion of the environmental review process.

Respectfully submitted,



Kathryn Kusske Floyd
Margaret Fawal
Amanda Crawford

⁵⁴ In fact, requiring a full application—which could not reverse the decision of the CIB to grant such funds—would only result in the expenditure of more funds to complete the regulatory review process. See *CA High Speed Rail (Merced)* at 21 (explaining that significant funding had already been committed to start the project and that the project would become more expensive by adding an additional layer of scrutiny beyond the section 10502 process).

⁵⁵ See *CA High Speed Rail (Merced)* at 20, n.104.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July 2020, I caused a copy of the foregoing Petitioner's Response to Replies to Petition for Exemption to be served on all parties of record by email or first-class mail, postage prepaid.



Margaret K. Fawal