

San Manuel Band of Mission Indians

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January 7, 2022

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
Patriot's Plaza 1
395 E Street, SW
Washington, DC 20423-0001

RE: Docket No. FD 35941

Dear Ms. Brown:

Please accept these comments from the San Manuel Band of Mission Indians (**San Manuel**) regarding the High Desert Corridor Joint Power Authority's (**Authority**) request for exemption under 49 U.S.C. § 10502 (**Petition**) to construct and operate a high-speed passenger rail line between Palmdale, CA and Apple Valley, CA (**the HDC Project**).

San Manuel is a federally recognized Indian tribe and a steward and protector of landscapes and cultural resources within Serrano Ancestral Territory, which includes the project area of potential effect for the HDC Project. As such, San Manuel is distressed by the past treatment of cultural resources, including human remains and sacred objects removed from the HDC Project and surrounding area during pre-construction archaeological investigations for this and other adjacent projects with the Topipabit Archaeological District and Topipabit Sacred Landscape (on file with the CA Native American Heritage Commission).

San Manuel has engaged in productive conversation in the past year with the Authority regarding the HDC Project and appreciate the improved level of dialogue that has not always been present. However, concerns remain. With the project funding still undetermined, responsible agencies have indicated there is no budget or process by which these ancestors and sacred objects can be returned to the area near the Serrano village of Topipabit. Thus, reburial work still needs to occur in this corridor pursuant to California Health and Safety Code. Additionally, due to prior project funding restraints, no Historic Preservation Technical Procedures (**HPTP**) were developed or approved for the HDC Project. Caltrans did not pursue the completion of additional steps in the Section 106 process, leaving Topipabit and other Serrano cultural landscapes and resources in this corridor in limbo. This is particularly concerning due to the fact that, as

early as 2014, San Manuel explained to Caltrans that there was not a sufficient effort to avoid the National Register of Historic Places (**NRHP**)-eligible Topipabit Archaeological District. San Manuel went on to explain in consultation meetings with Caltrans that all archaeological and ethno historical work in this region clearly identified the area between Turner Springs to Victorville Narrows as exceedingly culturally sensitive for Serrano peoples. This area is sensitive due to its habitation sites (major villages located along Mojave River corridor), ceremonial and sacred values, and due to the cumulative effect (loss) of cultural resources in this travel and transportation corridor over time due to repeated and ongoing infrastructure projects in this area.

Furthermore, the Programmatic Agreement (PA) for the original HDC Project was dismissive and apathetic to the very real resource-based concerns of the Tribe and, for that reason, the Tribe, in 2016, elected to not sign the PA as a concurring party. The revisions requested by the Tribe to make the agreement executable by San Manuel were not addressed by Caltrans. More recently, in 2021, both the CA State Historic Preservation Officer (SHPO) in March 2021 and San Manuel in July 2021, reiterated to the Authority that San Manuel had previously expressed many concerns with the project and PA that led to the decision to not sign that agreement. The Federal Railroad Administration was similarly made aware of San Manuel's history on the earlier iterations of the project as well as the Tribe's prior and continuing concerns in multiple communications between August-October 2021.

In its role as steward and protector, San Manuel requests that the Surface Transportation Board (**STB**) not take any additional action on the HDC Project, including granting the Petition, until the following occur:

- a. Compliance With Environmental and Cultural Resource Laws: Compliance with federal and state environmental and cultural resource laws, including National Environmental Protection Act (**NEPA**), National Historic Preservation Act (**NHPA**), Section 4(f) of the United States Department of Transportation Act of 1966, Executive Order 13175 and the California Environmental Quality Act (**CEQA**), is required prior to granting HDC Project related approvals, such as the Petition.

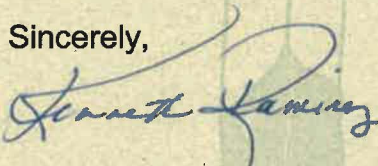
Compliance would include completion of the work discussed above, including the reburial work, the preparation of the HDTP, the Section 106 process, and the preparation of a Supplemental EIS/R. As admitted by the Petition, the Federal Railroad Administration (**FRA**), in coordination with STB, is conducting a reevaluation of the current rail project design to determine if the prior findings set forth in the Environmental Impact Statement and Environmental Impact Report of the previous design of the HDC Project (**EIS/R**) remain valid or if new significant or previously unidentified impacts would occur and additional environmental study and review is necessary. San Manuel requests that a Supplemental EIS/R be prepared before any decision on the Petition. As stated in the Petition, the settlement of the legal challenges to the EIS/R require Caltrans prepare a Supplemental EIS/R prior to acquiring any right-of-way or beginning construction of the highway element of the HDC Project. The railway element presumably will

be located on the same right-of-way and have similar construction impacts as the highway element. Accordingly, the Supplemental EIS/R should be prepared prior to starting the highway element be completed prior to the railway element of the HDC Project.

- b. Compliance with Native American Tribal Consultation Requirements: Federal and state (NHPA, NEPA, Executive Order 13175, CEQA, etc.) require that Native American Tribes be consulted early and throughout the approval process of project, such as the HDC Project, that impact their ancestors' remains and cultural resources. San Manuel has made separate requests to HCDJPA and to FRA to consult in and be a Cooperating Agency in the reevaluation of the adequacy of the EIS/R and NHPA and Section 4(f) compliance. As discussed above, San Manuel has served as a consulting party for the EIS/R and has a long history as a consulting party on other transportation projects that impact the cultural resources of the Serrano People. Accordingly, the Tribe was surprised not to be contacted with regards to the reevaluation of the EIS/R. San Manuel stands ready to consult on such reevaluation specifically and on further environmental and cultural resource regulations compliance efforts for the HDCJPA project.

For these reasons we ask that the Petition not be granted until the concerns above are appropriately addressed. Thank you for accepting our comments.

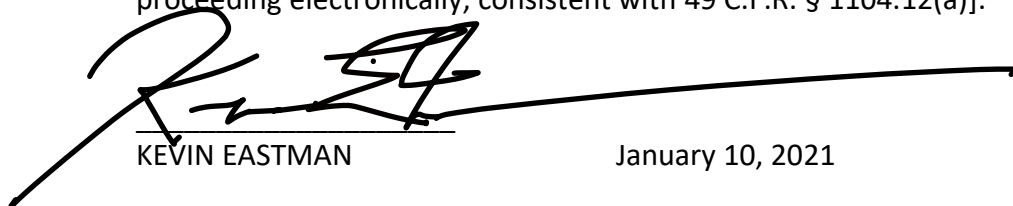
Sincerely,



Kenneth Ramirez, Chairman
San Manuel Band of Mission Indians

RE: San Manuel Band of Mission Indians Comment RE: Docket FD-35941

I certify that I have this day served copies of this document upon all parties of record in this proceeding electronically, consistent with 49 C.F.R. § 1104.12(a)].

A handwritten signature in black ink, appearing to read 'Kevin Eastman', is written over a horizontal line. The signature is stylized with a large initial 'K' and a long horizontal stroke extending to the right.

KEVIN EASTMAN

January 10, 2021