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August 10, 2022

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**Certified Mail No. 7020 3160 0001 2226 9878**

The Honorable Pete Buttigieg  
U.S. Department of Transportation, Office of the Secretary  
1200 New Jersey Ave, S.E.  
Washington, DC 20590-0001

**Certified Mail No. 7020 3160 0001 2226 9861**

Chairman Martin Oberman  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423-0001

**Certified Mail No. 7020 3160 0001 2226 9847**

Amit Bose, Deputy Administrator  
Federal Railroad Administration, Office of Communications  
1200 New Jersey Ave, S.E.  
Washington, DC 20590-0001

RE: Request for Supplemental Environmental Impact Statement for Texas  
Central's Proposed Dallas to Houston High-Speed Rail Project

Dear Secretary Buttigieg, Chairman Oberman and Deputy Administrator Bose:

I am an environmental lawyer and Professor in the Practice in Environmental Law in the Civil and Environmental Engineering Department at Rice University, where I teach courses in sustainable development and environmental law. I am also a Faculty Scholar at the Baker Institute, where I serve as co-director of the Severe Storm Prevention, Education, and Evacuation from Disaster (SSPEED) Center and direct the undergraduate minor in Energy and Water Sustainability.

On September 29, 2021, I sent you a formal request for a Supplemental Environmental Impact Statement (SEIS) in relation to the Final Environmental Impact Statement (FEIS) prepared in May 2020 by the Federal Railroad Administration (FRA), in coordination with the Surface Transportation Board, for Texas Central's proposed Dallas to Houston high-speed rail project (the Project).<sup>1</sup> I submitted my request on behalf of stakeholders including Texans Against High-Speed Rail, an organization comprised of impacted citizens, landowners, farmers, ranchers, business owners, interested

<sup>1</sup> I've attached my prior request for ease of reference. See Exhibit 1.

organizations, and elected officials, and the Texas counties (other than Dallas and Harris County) directly affected by the Project—Grimes, Waller, Madison, Leon, Ellis, Freestone, Limestone, and Navarro County.

In my request, I explained that, for many reasons, the FEIS for the Project is deficient and does not comply with NEPA. Put simply, the FEIS is fraught with NEPA violations. I explained that in addition to these NEPA violations, significant changed circumstances and new information require issuance of an SEIS.

I am not writing to rehash the points from my prior letter. Rather, I am writing to notify you of additional NEPA violations and changed circumstances concerning the FEIS that further demonstrate why an SEIS is required. And I am writing to formally re-urge my request for an SEIS.

**FRA failed to survey and address all historic and culturally sensitive properties.**

Although the FEIS addresses some historic and culturally sensitive properties, including certain Freedman Colonies (land that was acquired and worked by African-American families between 1870 and 1930), it failed to address several other such properties. For instance, the Morney-Berry Farm, located about 20 miles south of Dallas, is in the middle of the Project's current proposed route. This property received special designation from the Texas Senate as a historic agricultural property for being farmed by one family for more than 100 years. As recently recounted in an [article](#) by D Magazine, the Morney-Berry Farm is *not* included among the Freedman Colonies cited in the FEIS.<sup>2</sup> Apparently, the Morney-Berry Farm has never even received a request by Texas Central or FRA for its property to be surveyed. FRA's failure to survey and address the Morney-Berry Farm is yet another clear NEPA violation.

**Due to Texas Central's severe, ongoing financial struggles, its CEO recently resigned and its Board of Directors has disbanded.**

In my prior letter, I explained that the Project's skyrocketing costs and Texas Central's financial struggles are changed circumstances requiring an SEIS. New facts and circumstances concerning these issues have recently come to light.

On June 12, 2022, Carlos Aguilar announced his resignation as Texas Central's CEO. In a [post](#) on LinkedIn, Aguilar lamented that he "could not align our current

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<sup>2</sup> Christine Allison, *The Fate of Morney-Berry Farm Is Now Tied to the Texas Bullet Train*, D MAGAZINE (July 14, 2022).

stakeholders on a common vision for a path forward.” As reported by The Texan, Aguilar’s biography has been missing from Texas Central’s website since April and no executive team members are currently listed on the site.<sup>3</sup> The Texan later updated its article to reflect that Drayton McLane is no longer Chairman of Texas Central’s Board. Other outlets have reported on Aguilar’s sudden departure, including the Houston Chronicle and Dallas Business Journal.<sup>4</sup> A Spanish news site in Madrid, “La Informacion,” reported that in addition to the departure of Texas Central’s entire management team, the project has entered “a hibernation phase in search of financing.”<sup>5</sup>

Following these reports, the Texas & Louisiana Engineering News-Record reported that Texas Central’s entire “board of directors was recently disbanded.”<sup>6</sup> Former Chairman Richard Lawless said that Texas Central is now being managed by Michael Bui, a senior managing director at FTI Consulting who specializes in financial advisory and corporate restructurings. Mr. Bui advises clients through distress events, bankruptcy, reorganization, and sale.

How Texas Central intends to pay for the Project is a critically important issue because it concerns public utility. Since taxpayers are now going to foot the bill (see my prior letter), the cost-benefit evaluation of alternatives is quite different than evaluating a purely private sector proposal. Combined with the Project’s skyrocketing costs and switch from private to public funding, the departure of Texas Central’s CEO and installation of a distressed assets consultant as its interim manager is a changed circumstance requiring an SEIS.

**With a record-breaking summer heat wave, the Texas power grid continues to be stressed beyond capacity.**

In my prior letter, I explained that the recent failure of the Texas power grid constitutes a changed circumstance requiring an SEIS. A harsh winter storm caused this

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<sup>3</sup> Kim Roberts, *Texas Central High-Speed Rail CEO Carlos Aguilar Announces Departure*, THE TEXAN (June 13, 2022).

<sup>4</sup> Dug Begley, *Critics say the idea of Houston-Dallas bullet train could be over*, HOUSTON CHRONICLE (June 15, 2022); Holden Wilen, *Texas Central CEO Carlos Aguilar, leader of Dallas-to-Houston \$30 billion bullet train project, is stepping down*, DALLAS BUSINESS JOURNAL (June 13, 2022).

<sup>5</sup> Cristian Reche, *Renfe pierde al jefe del AVE de Texas en pleno pulso legal por las expropiaciones*, LA INFORMACION (JUNE 2, 2022).

<sup>6</sup> James Leggate, *Texas High-Speed Rail Project CEO Exits Company, Board Disbands*, TEXAS & LOUISIANA ENGINEERING NEWS-RECORD (June 15, 2022).

failure, which plunged large swaths of the state into subfreezing temperatures, overwhelming the state's electricity infrastructure and triggering massive power outages across Texas.

Unfortunately, the Texas power grid is now being overwhelmed by record-breaking heat waves. In early July, the Electric Reliability Council of Texas (ERCOT) set a new peak record demand of 78.2 gigawatts.<sup>7</sup> As of July 20, that record had been broken for the 11<sup>th</sup> time, with peak demand exceeding 80 gigawatts.<sup>8</sup> Many cities, including Austin, are on pace for their hottest summer ever.<sup>9</sup> ERCOT has been forced to ask Texans repeatedly to turn up their thermostats and stop running major appliances from 2pm to 8pm. Bitcoin miners, which represent over 1% of total grid capacity, were asked to shut off operations. As it had done when grid conditions worsened during the recent winter storm, ERCOT has implemented controlled, rotating power outages causing some Texans to lose power for extended periods of time. In fact, the Houston Chronicle created a Power Outage Tracker to monitor the impact of the summer heat wave.

In violation of NEPA, FRA failed to analyze whether the Texas power grid could deliver sufficient power to the Project during emergency situations, raising important safety and operational issues. As the recent winter storm and, now, this summer heat wave demonstrate, these emergency situations are likely to occur not only often, but year-round. While FRA may have believed an evaluation of the Project's impacts on the Texas power grid during emergency situations to be beyond the reasonable scope of its EIS, that has proven to no longer be the case.

**In projecting travel times and analyzing the reliability of the Project, FRA did not account for extreme track temperatures during Texas summers.**

According to safety standards proposed by FRA in March 2020, FRA will require Texas Central's Continuous Welded Rail (CWR) plan to contain procedures that control the trainsets' speeds when the difference between rail temperature and the rail neutral temperature is in a range that causes the presence of buckling-prone conditions at

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<sup>7</sup> Sneha Dey and Mitchell Ferman, *Texas grid operator urges electricity conservation as heat wave drives up demand*, TEXAS TRIBUNE (July 10, 2022).

<sup>8</sup> Shelby Webb, *ERCOT breaks demand record for 11<sup>th</sup> time this summer, reaching 80,000 megawatts*, HOUSTON CHRONICLE (July 20, 2022).

<sup>9</sup> Roberto Villalpando, *Austin on pace to make 2022 its hottest ever*, AUSTIN AMERICAN-STATESMAN (July 25, 2022).

specific locations.<sup>10</sup> If temperatures exceed a specified limit at a specific location, FRA has stated that it will enforce operational restrictions over the entire segment.

Due to the safety guidelines imposed on the Project, trainset speeds must decrease to 43 mph when track temperatures range between 140-147 degrees Fahrenheit. During Texas summers, this would occur regularly (up to 100 times per summer). In the FEIS, FRA did not account for these extreme track temperatures. Nor did it analyze the impact these extreme track temperatures would have on projected travel times and purported travel time savings, which directly relate to the reliability of the Project. FRA's failure in this regard requires issuance of an SEIS.

**The change from Central Japan Railway to Renfe as the operator of the Project is a significant changed circumstance requiring an SEIS.**

In the FEIS, FRA states that “[t]he Project includes deployment of an electric-powered HSR system based on Central Japan Railway Company’s Tokaido Shinkansen system.”<sup>11</sup> FRA goes on to boast about the safety record of the Shinkansen system developed and operated for many years by Central Japan Railway. But Central Japan Railway will not be the operator of the Project. Instead, in July 2021—more than a year *after* FRA released the FEIS—Texas Central named Renfe as the “Early Operator” of the Project.<sup>12</sup> According to Texas Central, Renfe will run the trains and maintain system components such as engines, signals, and other operational equipment.

FRA failed to analyze safety, crashworthiness, crash avoidance, and other related issues, as required by NEPA, with Renfe as the operator of the Project. Nor could it have, as Texas Central did not name Renfe as the operator of the Project until *after* publication of the FEIS. And, importantly, there is no data suggesting, let alone proving, that Renfe has any track record of safety *operating the proposed Shinkansen technology*. The switch from Central Japan Railway to Renfe as the operator of the Project is therefore a significant changed circumstance requiring issuance of an SEIS.

**FRA must issue an SEIS.**

Despite the FEIS’s deficiencies and the presence and awareness of significant changed circumstances and new information, all of which continue to mount, FRA has

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<sup>10</sup> See Texas Central Railroad High-Speed Rail Safety Standards, 85 Fed. Reg. 14036.

<sup>11</sup> FEIS, Executive Summary, ES.2 (May 2020).

<sup>12</sup> Dug Begley, *Spanish rail giant tapped as operator of planned Houston-Dallas bullet train*, HOUSTON CHRONICLE (July 14, 2021).

refused to issue an SEIS. Instead, FRA continues to rely on woefully outdated, inaccurate, and incomplete information. A supplemental EIS would provide the public and decision makers a very different picture of the Project's purported merits. FRA must issue an SEIS before any further decisions are made or future agency actions are taken.

Regards,

A handwritten signature in black ink, appearing to read "James H. Mackay". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

# **Exhibit 1**

# **BLACKBURN & CARTER**

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September 29, 2021

Secretary Pete Buttigieg  
U.S. Department of Transportation, Office of the Secretary  
1200 New Jersey Ave, SE  
Washington, DC 20590

Chairman Martin Oberman  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423-0001

Amit Bose, Deputy Administrator  
Federal Railroad Administration Office of Communications  
1200 New Jersey Ave, SE  
Washington, DC 20590

RE: Request for Supplemental Environmental Impact Statement for Texas  
Central's Proposed Dallas to Houston High-Speed Rail Project

Dear Secretary Buttigieg, Chairman Oberman and Deputy Administrator Bose:

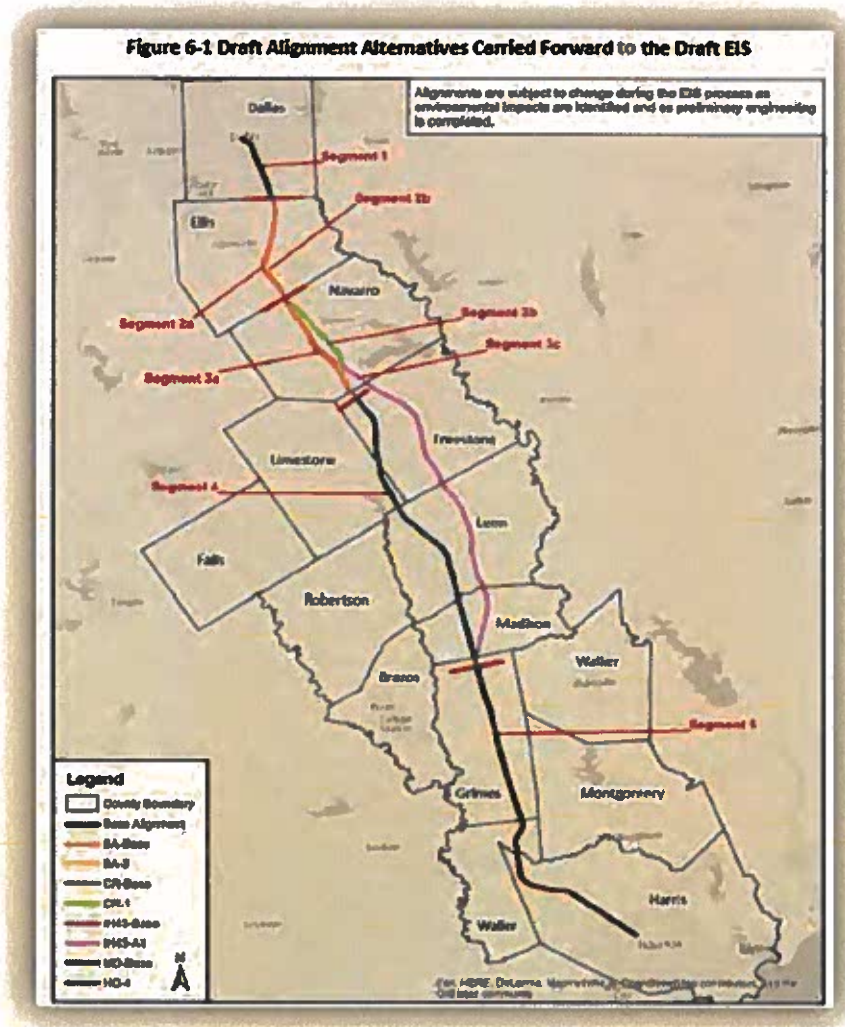
I am an environmental lawyer and Professor in the Practice in Environmental Law in the Civil and Environmental Engineering Department at Rice University, where I teach courses in sustainable development and environmental law. I am also a Faculty Scholar at the Baker Institute, where I serve as co-director of the Severe Storm Prevention, Education, and Evacuation from Disaster (SSPEED) Center and direct the undergraduate minor in Energy and Water Sustainability.

This is a formal request for a Supplemental Environmental Impact Statement (SEIS) in relation to the Final Environmental Impact Statement (FEIS) prepared in May 2020 by the Federal Railroad Administration (FRA), in coordination with the Surface Transportation Board (STB), for Texas Central's proposed Dallas to Houston high-speed rail project (the Project). I'm submitting this request on behalf of stakeholders including Texans Against High-Speed Rail, a 501(c)(4) organization comprised of impacted citizens, landowners, farmers, ranchers, business owners, interested organizations, and elected officials, and the eight Texas counties (other than Dallas and Harris County) directly

affected by the Project—Grimes County, Waller County, Madison County, Leon County, Ellis County, Freestone County, Limestone County, and Navarro County.

### **Background regarding FRA's actions.**

In 2014, FRA initiated scoping through publication of a Notice of Intent to prepare an EIS to evaluate “the impacts of constructing and operating” the Project.<sup>1</sup> At the time, FRA referred to the Project as the “Proposed Action” requiring review pursuant to NEPA. FRA stated it would, in its EIS, evaluate “route alternatives” for the Dallas to Houston corridor along with “alternatives for construction and operation of the Proposed Action.” Prior to its publication of the Draft EIS (DEIS) in December 2017, FRA eliminated all but two route alternatives. The map below shows the general area traversed by the route alternatives FRA purportedly evaluated in the DEIS.



<sup>1</sup> Exhibit 1.

On April 16, 2016, nearly two years *after* FRA initiated scoping to prepare an EIS to evaluate the impacts of constructing and operating the Project, Texas Central submitted a petition for a Rule of Particular Applicability (RPA) to establish safety standards for its proposed Tokaido Shinkansen high-speed rail technology. By design, the Shinkansen technology is not “interoperable” with any other existing transportation infrastructure, which simply means it cannot run on any other tracks and no other trains can run on its tracks. The Project, if ever built, would be totally incompatible with, and disconnected from, any existing or future rail lines.

On December 15, 2017, FRA published its DEIS with the stated purpose to document “FRA’s evaluation of [Texas Central’s] proposal to construct and operate a 240-mile, for-profit, [HSR] system connecting Dallas and Houston using the ... Shinkansen technology.” In a mere footnote, FRA stated that it “may issue a Rule of Particular Applicability ..., impose requirements or conditions by order(s) or waiver(s), or take other regulatory action(s) to ensure the Project is operated safely.”

On November 21, 2018, FRA issued new “Tier III” safety standards for railroad passenger equipment in an effort to stimulate high-speed rail development in the U.S. FRA’s Tier III rule applies to passenger trains traveling between 160 to 220 mph in areas with exclusive rights-of-way and no grade crossings. Because it did not “anticipate any environmental impacts from the requirements” of its Tier III rule, FRA determined the rule did not require a detailed NEPA review.

Texas Central’s proposed Shinkansen trainsets do not comply with Tier III regulations. As FRA put it, “significant operational and equipment differences exist between [the proposed Shinkansen system] and existing passenger operations in the United States.” Instead of modifying its technology to comply with Tier III regulations, Texas Central insisted on proceeding with its petition for an RPA in hopes FRA would carve out special standards that would apply only to its incompatible Shinkansen trainsets. FRA granted Texas Central’s rulemaking petition on August 30, 2019 and published a notice of proposed rulemaking (NPRM) on March 10, 2020.<sup>2</sup>

On May 29, 2020, published its FEIS. Despite the fact that its 2014 scoping notice did not mention anything relating to any evaluation of impacts that may result from any rulemaking, FRA claimed the FEIS “assesses the potential beneficial and adverse environmental impacts of FRA’s proposed rulemaking to enable effective safety oversight of the operation of an HSR system based on the ... Shinkansen technology that is described in a Petition for Rulemaking for [an RPA] submitted by Texas Central.”

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<sup>2</sup> Exhibit 2.

On November 3, 2020, FRA published its “Final rule; rule of particular applicability and record of decision.”<sup>3</sup> The Record of Decision (ROD) authorized FRA’s rulemaking action (the RPA) but did *not* authorize construction *or* operation of the Project: “FRA does not grant any kind of construction approval or permit. Neither does this final rule, by itself, grant any permission or authority for [Texas Central] to operate.”

On July 16, 2020, prior to FRA’s issuance of the RPA and ROD authorizing the RPA, the STB asserted jurisdiction over the Project after initially declining to do so in 2016.<sup>4</sup> In its decision, the STB made clear that Texas Central cannot begin *any* construction *or* operation unless and until the STB approves a full application under 49 U.S.C. § 10901 and 49 C.F.R. part 1150.

To date, Texas Central has refused to file an application for a construction permit. Despite this fact, stakeholders are concerned that if and when Texas Central does so, it will attempt to use the FEIS to support its application for a construction permit. Likewise, stakeholders are concerned that the STB will consider the FEIS in deciding whether to take any future final agency action concerning the Project, including approval or rejection of Texas Central’s application for a construction permit. For reasons that will be explained, the FEIS may not be used by the STB (or any other agency) unless and until FRA issues a supplemental EIS.

**The FEIS is deficient and does not comply with NEPA.**

The FEIS is fraught with NEPA violations. In the FEIS, FRA failed to adequately consider all reasonable alternatives to the Project, including but not limited to all reasonable high-speed rail alternatives. FRA failed to consider all reasonable route alignment alternatives. FRA failed to adequately consider the no action alternative. FRA failed to fully disclose all hydrologic, floodplain, and wetland impacts. FRA failed to adequately consider numerous adverse environmental impacts. FRA impaired fair consideration of the Project’s adverse environmental impacts. FRA failed to consider environmental and social justice impacts.

In addition, at least five federally-listed and fourteen state-listed threatened and endangered species will be impacted if the Project is built.<sup>5</sup> As explained below, neither

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<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

<sup>5</sup> These species include the following: Whooping Crane, Piping Plover, Interior Least Tern, Wood Stork, White-faced Ibis, American Peregrine Falcon, Bald Eagle, Red-cockaded Woodpecker, Sprague’s Pipit, Black-capped Vireo, Golden-cheeked Warbler, Navasota Ladies-tresses, Large-

FRA nor Texas Central performed adequate surveys in the Project area in compliance with NEPA and the Endangered Species Act (ESA). FRA also disregarded recommendations from the Texas Parks and Wildlife Department (TPWD) concerning avoidance or mitigation of the numerous adverse impacts of the Project on the recreational, cultural, fish, and wildlife resources of Texas. FRA's failures in this regard constitute violations of NEPA, ESA, the Migratory Bird Treaty Act (MBTA), and the Bald and Golden Eagle Protection Act (BGEPA).

So, while the FEIS may allegedly be sufficient for purposes of supporting FRA's issuance of its rulemaking action (the RPA), the FEIS is utterly insufficient to support *any* decision concerning construction or operation of the Project, including selection of the preferred route alternative.

Although it is unclear whether either FRA or the STB are presently contemplating any agency action concerning the Project, stakeholders must register these concerns now because FRA, in its 2014 scoping notice, stated its intent to evaluate the impacts that would result from construction and operation of the Project.<sup>6</sup> And even though FRA's ultimate agency action concerned *only* the establishment of safety standards for the proposed Shinkansen technology, FRA did purportedly evaluate various Dallas to Houston route alternatives along which the Project would be constructed. In fact, FRA referred to this evaluation as the "proposed action" in its 2014 scoping notice.<sup>7</sup>

#### **Due to changed circumstances and new information, an SEIS is required.**

An agency's obligation to evaluate the environmental impacts of a proposed action using accurate and up-to-date information continues throughout the NEPA review process, including after an EIS has been finalized. An EIS must be supplemented if "[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns" or "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."<sup>8</sup>

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fruits Sand Verbena, Texas Prairie Dawn, Houston Toad, Louisiana Pine Snake, Timber Rattlesnake, Alligator Snapping Turtle, Texas Horned Lizard, Blue Sucker, Creek Chubsucker, Smalleye Shiner, Sharpnose Shiner, Smalltooth Sawfish, Smooth Pimpleback, Texas Fawnsfoot, False Spike, Texas Heelsplitter, and Louisiana Black Bear.

<sup>6</sup> Exhibit 1.

<sup>7</sup> Exhibit 1.

<sup>8</sup> 40 C.F.R. §§ 1502.9(c)(1)(i)-(ii).

In determining whether to prepare an SEIS, agencies must take a “hard look at the proffered new information.”<sup>9</sup> When new information creates a “seriously different picture of the project from what was previously envisioned,” an SEIS is required to allow the public and other government agencies time to react and comment.<sup>10</sup> Both grounds for supplementation of the FEIS are present here. First, FRA changed the Project’s purpose during the course of development of the FEIS. FRA initially stated its intent to evaluate the impacts of constructing and operating the Project along various route alternatives.<sup>11</sup> Years later, however, FRA stated its intent to propose a set of safety rules (the RPA) applicable only to Texas Central’s proposed Shinkansen technology. If *any* requests for construction or operational permits are forthcoming, the subsequent NEPA review should be considered a changed condition from the end point of the FEIS. In other words, both route and technology alternatives must be reconsidered and reevaluated prior to any future agency action.

Second, numerous changed circumstances and significant new information require supplementation of the FEIS, including but not limited to: (1) new information about climate change; (2) new Executive Orders concerning environmental and social justice; (3) the recent disastrous failure of the Texas power grid; (4) the Project’s skyrocketing costs; (5) Texas Central’s serious, ongoing financial struggles coupled with its request for taxpayer funding; (6) wetland and air quality issues associated with construction and operation of the Project; and (7) the impact of the COVID-19 pandemic on travel patterns in the U.S. Each of these issues alone support preparation of an SEIS. Together, these issues undoubtedly require a much more comprehensive environmental and social impact analysis prior to any future agency decision-making or action.

**Years after initiating its proposed action, FRA changed the Project’s purpose.**

Based on key documents leading to FRA’s rulemaking (the RPA), it is apparent that FRA used its evaluation of route alternatives only to determine whether it sufficiently understood the impacts of the proposed Shinkansen technology, in order to allow issuance of the RPA and the ROD authorizing the RPA. FRA made no determination concerning route alternatives or alternative technologies, as any such determinations relate to implementation of construction of the Project.

As previously stated, the proposed Shinkansen technology is, by design, incapable of connecting with any existing or future U.S. rail lines. There are many HSR alternatives

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<sup>9</sup> *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996).

<sup>10</sup> *Id.*

<sup>11</sup> Exhibit 1.

that could connect to and strengthen the national rail network, and that would result in far fewer environmental impacts. Instead of evaluating *all* reasonable alternatives, as NEPA requires, FRA deferred to Texas Central as to the range of alternatives to be considered and scope of environmental analysis to be conducted. It makes sense, then, that FRA did not evaluate other technologies, as the FEIS was used only to support FRA's decision to issue a rulemaking potentially allowing use of the Shinkansen technology.

On the other hand, if Texas Central asks the STB to authorize construction or operation of the Project, it also makes sense that a full-fledged NEPA alternatives analysis would be required—from scratch. This analysis would include evaluation of alternative technologies that could interconnect with other rail systems. More importantly, this analysis would include thorough evaluation of the “no-action” or “no-build” alternative, given that the proposed Shinkansen technology does not (and cannot) interconnect. Unless alternative technologies are fully explored and evaluated, the taxpayer funds that Texas Central currently seeks would be wasted on an alternative that will not provide utility to the United States as a whole.

Similarly, FRA did not conduct selection of the proposed route alternative in compliance with the alternative analysis methodologies required by NEPA. In particular, FRA eliminated a number of route alternatives out of hand because they were not considered to be “economically viable.” FRA did so because, at the time, the Project's purpose included economic viability. But in the DEIS, FRA removed economic viability from the Project's purpose altogether. Despite this material change to the Project's purpose, FRA never reconsidered the eight alignments it had eliminated during scoping.

In truth, FRA gave only a single alternative route serious consideration and evaluation. Again, in the context of evaluating the approval of a rulemaking establishing a set of safety standards for the Shinkansen technology, such a limitation might be considered acceptable. But a much more thorough evaluation of route alternatives is required to determine a suitable location for a land use that will require thousands or acres of private property, cross multiple streams, flood plains and wetland areas, and potentially obstruct water flow wherever fill for the Project is placed on the land surface. FRA did not adequately evaluate these serious impacts.

#### **New information concerning climate change requires an SEIS.**

FRA did not adequately evaluate the impacts of climate change in the FEIS. In addition, new information and changed conditions concerning climate change require supplementation of the FEIS. Among other events, a new federal mandate exists relative to climate change. Signed on January 27, 2021, Executive Order (E.O.) 14008 -- *The*

Based on Table 1 and the IPCC's new report, it is clear that our large storms are getting larger, which is particularly important when considering the impacts of this Project—a linear land use built upon fill material that crosses north-to-south through a landscape that generally drains west-to-east or east-to-west. In other words, the Project has the potential to act as a dam or levee if sufficient flow capacity for river and stream crossings are not provided. If its design is based on the older rainfall estimates, the Project will act as a dam, impacting every landowner along its path severely and often.

In light of these changing rainfall amounts, the hydrologic impact of construction of the Project on adjacent landowners, flood plain constriction, and runoff must be considered in an SEIS. Moreover, the IPCC report indicates we can expect more frequent occurrences of other severe weather events, including unprecedented freezes associated with jet stream movement, an increase in the occurrence of fires, and much higher temperatures. These events will, in turn, affect the Project's ability to perform as anticipated, along with the dependability of the Texas power grid upon which the Project will derive its power (see discussion on page 10 below).

**New mandates related to environmental justice require serious inquiry in an SEIS.**

When President Biden took office, one of his major agenda items concerned environmental justice. To implement his agenda, on January 20, 2021 he signed Executive Order 13985 -- *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.<sup>14</sup> EO 13985's goal is to advance racial equity and support for underserved communities through the federal government, and it applies to all federal agencies.

The Project would disproportionately impact minority and low-income communities. Of the 135 total block groups studied by FRA, 87 were identified as minority or low-income block groups. 63 of these 87 block groups (72%) are located in Dallas and Harris Counties. In Dallas County, 27 of the 30 block groups impacted by the project have minority or low-income communities (6 minority communities, 1 low-income community, and 20 identified as both).

The Project would displace between 279 and 321 total residential, commercial, and community facility structures. Of those, 111 to 135 would be located within minority or low-income block groups. Homes would be displaced within each of these minority or low-income communities.

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<sup>14</sup> Exhibit 6.

The Le May and Le Forge community, located between Illinois Avenue and Loop 12 in Dallas County, would be directly impacted by the Project, as at least 14 homes would be displaced. The neighborhood is part of the larger Cedar Crest neighborhood but it is isolated by utility and freight rail infrastructure. The Project would further isolate this minority and low-income neighborhood from the rest of the Cedar Crest community. Only 20 homes would remain, and a portion of Le May and Le Forge Avenues would be adjacent to the Project's viaduct infrastructure, creating an impact to the cohesive character of the remaining part of this neighborhood.

Rather than conduct a methodological analysis of alternative sites for the Dallas terminal, Texas Central made an agreement with a local developer who donated the site for the terminal. FRA did not evaluate any alternative terminal site in Dallas, in direct contravention of EO 13985 and in violation of NEPA. If FRA were to conduct a serious inquiry into whether the Project should even be constructed, the Dallas terminal location should be a focus of FRA's evaluation and consideration in an SEIS.

**The recent failure of the Texas power grid is a changed circumstance requiring an SEIS.**

While Texas produces and consumes more electricity than any other state, it is also the only state that runs a stand-alone, independent electricity grid. Most of the state's power grid—the majority of which is operated by the Electric Reliability Council of Texas (ERCOT)—cannot connect to other grids when a disaster occurs.

In February 2021, Texas endured a winter storm that plunged large swaths of the state into subfreezing temperatures and overwhelmed the state's electricity infrastructure, causing massive power outages across the state. Nearly half of the total power generation capacity was offline as weather conditions caused failures in every type of power source: coal, natural gas, wind, and nuclear. Of particular importance was the loss of many of the natural gas-fired power plants due to various supply chain failures that were exacerbated by the absence of the ability to store natural gas easily at the end-user location.

During the storm, approximately 46,000 megawatts of power — enough to provide power to 9 million homes on a high-demand day — had to be pulled off the grid.<sup>15</sup> At the peak of the crisis, more than 4.5 million homes across Texas were without power. According to ERCOT's former president, the power grid was “seconds and

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<sup>15</sup> Jeremy Schwartz, Kiah Collier, and Vianna Davila, “Power companies get exactly what they want”: How Texas repeatedly failed to protect its power grid against extreme weather, TEXAS TRIBUNE (Feb. 22, 2021).

minutes” away from catastrophic failure that could have left Texans without power for months.<sup>16</sup> At least 57 deaths have been tied to the storm.

According to the EIS, the Project “would obtain electricity from the statewide grid, managed by [ERCOT], resulting in an overall effect on statewide energy use. The total energy (electrical) demand of the Project, at maximum, is estimated to be 531,867 megawatt hours (MWh) per year.” That amounts to an average daily use of 1,457 MWh. By comparison, ERCOT estimates that 1 MWh can fuel the needs of approximately 200 homes per day, meaning the Project would require the energy equivalent of approximately 291,400 homes.

In the FEIS, FRA states that ERCOT projects an increase in electricity demand in Texas to the tune of 489,840 MWh of additional daily generation. But at legislative hearings held to address the recent crisis, the former heads of ERCOT and the Public Utility Commission (PUC) testified that they do *not* see capacity being added because there is no market for it.

In short, FRA failed to analyze whether the Texas power grid could deliver sufficient power to the Project during emergency situations, raising important safety and operational issues. Nor did FRA evaluate the Project’s impact on the overall availability of power within the grid if no new capacity will be added to account for the Project’s increase on demand. While FRA may have believed an evaluation of the Project’s impacts on the Texas power grid during crises or emergency situations to be beyond the reasonable scope of its EIS, that has proven to no longer be the case.

**The Project’s skyrocketing costs and Texas Central’s financial struggles are changed circumstances requiring an SEIS.**

For years, Texas Central has claimed the project “is a private venture with private investors putting their capital at risk.” In numerous state court lawsuits, it swore to courts that it will construct the Project “with exclusively private financing.” As recently as August 2019, Texas Central swore to the STB federal agency that the Project will be “financed entirely by investors and entrepreneurs.”

On April 8, 2020—a month before FRA signed the FEIS—Texas Central representative Drayton McLane made two startling admissions. First, McLane admitted costs had ballooned *to at least \$30 billion*, lamenting that “the project has turned into a

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<sup>16</sup> Erin Douglas, *Texas was “seconds and minutes” away from catastrophic monthslong blackouts, officials say*, TEXAS TRIBUNE (Feb. 18, 2021).

\$30B project and we have certainly hit a snag with all of the difficulties of the Corona Virus.” When asked about this estimate, CEO Carlos Aguilar said it was merely “a conservative estimate of ‘all in’ numbers.” Second, McLane admitted Texas Central’s “private” Project will *not* be “financed entirely by investors and entrepreneurs,” as FRA had represented in the DEIS (and would represent in the FEIS a month later). Rather, McLane confirmed Texas Central’s intention to rely on funding “from President Trump’s infrastructure stimulus through the Department of Transportation,” a fact CEO Aguilar would later confirm.

These admissions were extremely concerning, especially when viewed in the context of certain facts that had come to light just months earlier. In August 2019, Texas Central admitted in sworn documents submitted to the STB that it had raised only \$450 million in financing. This relatively paltry amount, which includes a \$300 million loan from the Japan Bank of International Cooperation, accounts for merely 1.5% of the Project’s current estimated costs. Regarding its glaring lack of financing, Texas Central CEO Aguilar admitted, “[w]e don’t know whether that’s going to be there or not.” And in March 2020, Texas Central laid off 28 employees, including executive level, public relations and field staff positions. According to Aguilar, Texas Central “ha[s] been forced to make hard decisions in an effort to make the best use of our current funding.”

On May 6, 2021, Aguilar testified before the U.S. House Committee on Transportation & Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials. In his written testimony, he said that Texas Central hoped “to access the Railroad Rehabilitation and Improvement Financing Program and other high-speed rail initiatives.”<sup>17</sup> In making his plea for taxpayer money, Aguilar falsely testified, “we have achieved all major permitting and engineering milestones needed to begin construction.” Of course, Texas Central has not even filed its application for a construction permit with the STB, let alone obtain one.

More recently, on September 6, 2021, Aguilar admitted he doesn’t even know how much taxpayer money Texas Central may need: “How much it is or ends up being I cannot say precisely... our current estimate is around \$12 billion. But it could be more. It is in that range.”<sup>18</sup> In the same interview, Aguilar repeated Texas Central’s false claim that “[a]ll the major items that we need to support the execution phase are in place.”<sup>19</sup>

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<sup>17</sup> Exhibit 7, p. 7.

<sup>18</sup> Jason Whitely, *Building Texas bullet train hinges on Congress passing bipartisan infrastructure bill, CEO says*, WFAA-TV (Sep. 6, 2021).

<sup>19</sup> *Id.*

How Texas Central intends to pay for the Project is an important issue because it concerns public utility. If taxpayers are going to foot the bill (as opposed to the private sector, as Texas Central promised), the cost-benefit evaluation of alternatives is quite different than simply evaluating a purely private sector proposal. Combined with the Project's skyrocketing costs, the sudden switch from private to public funding is a significant changed circumstance requiring an SEIS.

**The FEIS fails to adequately address wetland issues.**

Because Texas Central was not seeking permission to construct the Project, FRA left many issues unresolved in the FEIS. One such issue concerns the full extent of jurisdictional wetlands impacted either by filling activities or flow modifications associated with the Project's design. Texas Central did not conduct detailed surveys of impacted properties and, as a result, these potentially serious impacts are unknown. In all, Texas Central failed to conduct on-the-ground surveys of at least 35% (over 80 miles) of the lineal mileage along the proposed route. The following table sets forth the approximate lineal mileage and acres of affected property that was never surveyed:

| County           | Lineal mileage not surveyed | Acreage not surveyed |
|------------------|-----------------------------|----------------------|
| Waller County    | 63%                         | 3,800                |
| Grimes County    | 57%                         | 15,000               |
| Leon County      | 46%                         | 6,600                |
| Ellis County     | 26%                         | 7,274                |
| Harris County    | 23%                         | 6,619                |
| Madison County   | 21%                         | 2,100                |
| Limestone County | 11%                         | 1,900                |
| Freestone County | 10%                         | 1,900                |
| Navarro County   | 9%                          | 1,783                |

Texas Central also failed to conduct surveys on adjacent and other affected property, to the tune of at least 47,000 acres (73.5 square miles). Because Texas Central never surveyed a substantial majority of property along and adjacent to the right-of- way, sufficient information simply does not exist to determine the Project's environmental impacts, particularly on wetlands.

### **The FEIS fails to adequately address air quality issues.**

To calculate emissions, FRA relied on Texas Central's proprietary ridership report, which it has refused to disclose to FRA or the public. Although FRA reviewed the ridership methodology attached as Appendix J to the FEIS, it conceded that its review "does not constitute a validation of the model results but simply an assessment of the methodology."<sup>20</sup> In other words, FRA merely blindly adopted Texas Central's grossly exaggerated ridership projections. If, in fact, these projections cannot be met, vehicles will not be diverted from Interstate 45 (I-45) and none of the supposed benefits of the Project will be realized, at great economic and environmental expense.

Although Texas Central refused to disclose its ridership report, Appendix J confirms that Texas Central included "Add I-35 traffic" as one of the steps in estimating traffic counts.<sup>21</sup> Yet, Interstate 35 (I-35) runs between Dallas and Austin, *not* Dallas and Houston. An SEIS is therefore needed to evaluate how much of FRA's total traffic counts included I-35 traffic as opposed to the proper measure of traffic isolated to I-45.

In addition, FRA used 1.2 passengers per vehicle (PPV) in attempting to calculate the number of Vehicle Miles Traveled (VMT) removed. But the 1.2 PPV figure constitutes the estimated number of PPV traveling to either the Dallas or Houston terminal to board the Project, *not* the estimated number of passengers used by Texas Central in its ridership study to estimate traffic counts between Dallas and Houston.<sup>22</sup> To accurately calculate VMT removed, FRA must plug in the number of PPV Texas Central used in its ridership study.<sup>23</sup> According to Appendix J of the FEIS, which references an estimate of "the number of travelers per vehicle," this figure should be readily available.<sup>24</sup>

In the FEIS, FRA states that, by 2040, 94% of the projected 7.2 million annual passengers will be diverted from vehicles to the Project. However, Appendix J states

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<sup>20</sup> FEIS, Appendix J, p. 1.

<sup>21</sup> FEIS, Appendix J, p. 7.

<sup>22</sup> FEIS at 3.2-12.

<sup>23</sup> For its proposed high-speed rail project, DesertXpress used 1.18 PPV for high-speed rail workers driving to the station to work, 1.85 PPV for passengers driving to the station to board the high-speed rail, and 2.5 PPV for passengers driving between the end point stations. The higher the PPV, the lower the number of vehicles and lower the VMT. By substituting 2.5 PPV for the 1.2 PPV used by FRA in its calculations in the FEIS, the estimated number of vehicles removed from travel per day between Dallas and Houston decreases from 15,452 to 7,416.

<sup>24</sup> FEIS, Appendix J, p. 7.

that between 57% and 73% of passengers will be diverted (by 2029 and 2050 respectively). It states further that between 14% and 28% of these diverted passengers will be “induced” passengers, meaning those that would not have chosen to travel between Dallas and Houston but for the Project. These induced passengers should be *added* to the emissions calculations, given that they will have to take some form of transportation to get to and from the terminal to board the Project. But FRA subtracted these induced passengers from the emissions calculations. Thus, the FEIS fails to account for the increase in emissions resulting from induced passengers.

In calculating emissions for non-attainment areas (NAA), FRA incorrectly assumed that all high-speed rail travelers would be completely removed from roadways in both Dallas and Houston. FRA ignored the fact that 94% of passengers in Dallas and 96% of passengers in Houston will drive to the terminal, either in their own vehicles, taxis, or rideshares. Many would not drive into Houston or Dallas at all if, for example, they were starting their trip north of Houston or south of Dallas. As a result, the Project would result in an increase in traffic in both cities. FRA did not account for this increase.

Finally, FRA assumed a 5-year construction timeline in its purported calculation of estimated emissions.<sup>25</sup> Yet, Texas Central’s CEO Carlos Aguilar recently stated that construction may take over 7 years (80.5 months).<sup>26</sup> This significant change to the construction timeline requires a recalculation of estimated air quality emissions.

### **The COVID-19 pandemic is a significant changed circumstance requiring an SEIS.**

The COVID-19 pandemic has decimated the travel industry and upended all notions of what future travel may be. The impact in the U.S. has been dramatic, as many Americans are now working from home, intercity travel has plummeted, and rail and air travel are a fraction of what they once were. The future of travel is uncertain and the degree to which Americans will be willing to travel in a small, enclosed space — such as a high-speed rail car — is unknown. As Metro’s General Manager recently put it, “[t]he other issue for us is even what the new normal looks like, particularly with teleworking and some of the things that are going on.... we just can’t assume that we would get back to pre-pandemic levels because that [customer] base may just be totally different.”<sup>27</sup>

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<sup>25</sup> FEIS at 3.2-6, 3.2.3.1.1.

<sup>26</sup> Jason Whitely, *Building Texas bullet train hinges on Congress passing bipartisan infrastructure bill, CEO says*, WFAA-TV (Sep. 6, 2021).

<sup>27</sup> Justin George, *Metro budget cuts weekend service, half of bus routes and closes 19 stations amid dire financial forecast*, THE WASHINGTON POST (Nov. 30, 2020).

With respect to passenger rail service, Amtrak has been severely impacted by the pandemic, having suspended routes and reduced service on others due to a dramatic decline in demand. Amtrak acknowledged future ridership will be negatively affected by behavioral issues, including teleworking, and is re-thinking appropriate capacity limits. A recent survey reveals a reluctance by travelers to use trains in the future. Amtrak now anticipates that ridership will be adversely impacted even when the pandemic subsides. Due to these challenges, Amtrak has requested \$1.475 billion in emergency funding.

Metro faces similar challenges. It is proposing the first ever elimination of weekend rail service as the transit agency's financial struggles continue to mount. With a nearly \$500 million deficit, Metro is proposing to cut 4,000 positions. Nineteen stations may close as its service is slashed by more than half. Metro had projected nearly \$800 million in revenue for the 2020 fiscal year, before COVID-19 struck. Now, Metro predicts revenue of \$264 million in 2021 assuming ridership continues to grow.

A dramatic transformation is occurring in the transportation and travel industries due to the COVID-19 pandemic. Even if the pandemic ends, ridership might never return to pre-pandemic levels because some work arrangements will have been permanently altered. As such, rail service providers are now planning for the permanently-changed future of travel—including significant revisions to ridership forecasts. The uncertainty of the future of travel and complications arising from the COVID-19 pandemic constitutes a significant changed circumstance warranting supplementation of the FEIS.

**FRA must issue a supplemental EIS.**

Despite the FEIS's deficiencies and the presence and awareness of significant changed circumstances and new information, FRA has neglected to issue a supplemental EIS. Instead, it continues to rely on woefully outdated, inaccurate, and incomplete information. A supplemental EIS would provide the public and decisionmakers a very different picture of the Project's purported merits. FRA must issue a supplemental EIS before any further decisions are made or future agency actions are taken.

Regards,

A handwritten signature in black ink, appearing to read "James H. Mack". The signature is fluid and cursive, with a large initial "J" and "M".