

September 24, 2021

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Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
September 24, 2021
Part of
Public Record

Re: *High Desert Corridor Joint Powers Authority—Construction and Operation Exemption—Passenger Rail Line in Los Angeles and San Bernardino Counties, CA*, STB Docket No. FD 35941

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding the High Desert Corridor Joint Power Authority's Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the proposed High Desert Corridor Rail Project.

The Authority has electronically paid the filing fee of \$96,600 pursuant to 49 C.F.R. § 1002.2(f)(12)(iii). However, the Authority seeks a waiver of the filing fee based on the fact that it is a local government entity and is filing this petition on behalf of the general public, not in its proprietary role. *See* 49 C.F.R. § 1002.2(e)(1)). The Authority was formed in 2006 to support the development of a multipurpose transportation corridor connecting the Palmdale/Lancaster area in California to the cities of Adelanto, Victorville, Hesperia, and Apple Valley. Members of the Authority include the counties of San Bernardino and Los Angeles, the Town of Apple Valley, and the cities of Adelanto, Victorville, Lancaster, and Palmdale.

If the Board determines that a fee waiver should not be granted under 49 C.F.R. § 1002.2(e)(1), the Authority alternatively requests a waiver under 49 C.F.R. § 1002.2(e)(2). Here, the best interest of the public would be served by a waiver since the Authority is not, and will not act as, a privately-owned transportation entity and does not intend to operate over the line. Rather, the Authority is acting on behalf of the general public in the counties of San Bernardino and Los Angeles to provide a safe, reliable, convenient, and environmentally friendly travel option between Palmdale and the Town of Apple Valley.

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Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Kathryn Kusske Floyd". The signature is written in a cursive, flowing style.

Kathryn Kusske Floyd

*Counsel for the High Desert Corridor
Joint Powers Authority*

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35941

**HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY
-CONSTRUCTION AND OPERATION EXEMPTION-
-PASSENGER RAIL LINE IN LOS ANGELES AND
SAN BERNARDINO COUNTIES, CA**

PETITION FOR EXEMPTION

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Dated: September 24, 2021

Filing Contains Color Images

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SURFACE TRANSPORTATION BOARD**

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–PASSENGER RAIL LINE IN LOS ANGELES AND
SAN BERNARDINO COUNTIES, CA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, the High Desert Corridor Joint Powers Authority (“Authority” or “Petitioner”) submits this Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10901 for Petitioner to construct and operate an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, CA (the “HDC Rail Project”). Petitioner also requests an exemption from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences. As Petitioner explains below, the HDC Rail Project will benefit the public and promote the national transportation policy by providing a safe, reliable, convenient, and environmentally friendly travel option between Palmdale and the Town of Apple Valley. In addition, the HDC Rail Project will connect existing Metrolink service and future California High-Speed Rail (“California HSR”) service in Palmdale with the DesertXpress Enterprises,

LLC/XpressWest High-Speed Train Project¹ (referred to herein as “BrightlineWest”) in the Town of Apple Valley, enabling high-speed rail transportation for interstate passengers between the Los Angeles metropolitan area and Las Vegas, Nevada.²

This Petition is supported by the Verified Statement of Arthur Sohikian (attached hereto as Exhibit A).

BACKGROUND

I. Petitioner

The Authority was formed in 2006 to support the development of a multipurpose transportation corridor connecting the Palmdale/Lancaster area to the cities of Adelanto, Victorville, Hesperia, and Apple Valley.³ Members of the Authority include the counties of San Bernardino and Los Angeles, the Town of Apple Valley, and the cities of Adelanto, Victorville, Lancaster, and Palmdale.⁴ The Authority will be responsible for constructing the tracks, stations, platforms, and other

¹ See *DesertXpress Enterprises, LLC—Construction & Operation Exemption—In Victorville, CA and Las Vegas, NV* (“*DesertXpress*”), STB Finance Docket No. 35544 (STB served Oct. 25, 2011).

² The Board has previously granted petitions for exemption to construct and operate the segments of the California HSR line and the BrightlineWest rail line. See *California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare & Kern Counties, Cal.*, STB Finance Docket No. 35724_1, at 21 (STB served Aug. 12, 2014); *California High-Speed Rail Authority—Construction Exemption—In Merced, Madera & Fresno Counties, Cal.* (“*California High-Speed Rail Authority*”), STB Finance Docket No. 35724, at 28 (STB served Jun. 13, 2013); *DesertXpress* at 8.

³ Verified Statement of Arthur Sohikian in Support of Petition for Exemption (“Sohikian V.S.”) ¶ 5.

⁴ *Id.*

infrastructure along the route.⁵ When completed, it is anticipated that the HDC Rail Project will be operated and maintained by a third-party operator.⁶

II. The High Desert Corridor Rail Project

The Authority is developing an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, California. In Palmdale, the HDC Rail Project will physically connect to the Palmdale Transportation Center, a multi-modal transportation center featuring a Metrolink rail station, a local bus hub, commuter bus, and future California HSR service north to the Central Valley and San Francisco and south to Burbank, Los Angeles, and Anaheim.⁷ In the Town of Apple Valley, the rail line will physically connect to the proposed BrightlineWest system, which will provide service from Victor Valley to Las Vegas, Nevada.⁸ The HDC Rail Project—which will be interoperable with both the California HSR and Brightline West systems⁹—is part the California State Rail Plan, which envisions stop-limited high-speed rail service between Las Vegas and Los Angeles (see Figure 1).¹⁰

⁵ *Id.* ¶ 12.

⁶ *Id.* At this time, the Authority intends to obtain the common carrier obligation to operate the rail line from the Board. If and when the Authority seeks to transfer its operational rights to a third party, it will comply with all applicable Board requirements and procedures. *Id.* ¶ 13.

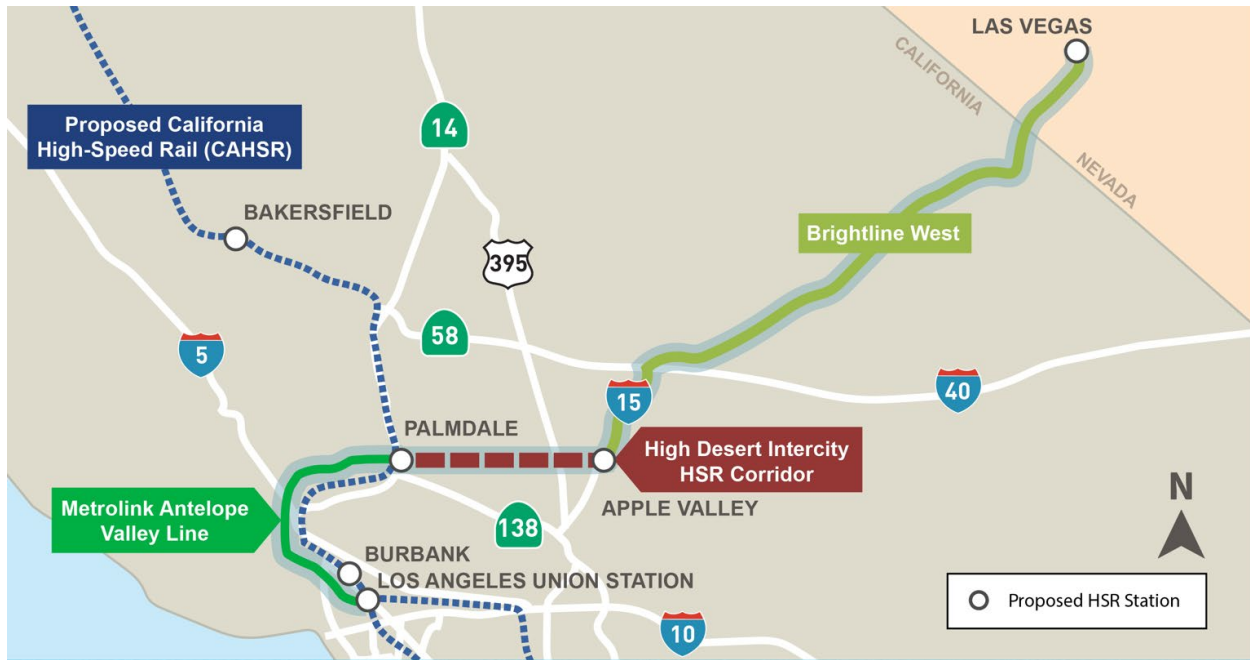
⁷ *Id.* ¶ 8.

⁸ *Id.*

⁹ *Id.*

¹⁰ California State Rail Plan at 150 (Caltrans 2018), available at <https://dot.ca.gov/programs/rail-and-mass-transportation/california-state-rail-plan>.

Figure 1: Map of HDC Rail Project and Planned Connections



Although the HDC Rail Project will be located solely within California, the line will be part of the interstate rail network and is therefore subject to the Board's jurisdiction. *See* 49 U.S.C. § 10501(a)(2)(A). As discussed herein, the HDC Rail Project will share a station and be interoperable with two interstate carriers: the California HSR line at the Palmdale Transportation Center and the BrightlineWest high speed rail station in the Town of Apple Valley.¹¹ The Authority forecasts that the HDC Rail Project will capture 11% of persons traveling interstate between Southern California and Las Vegas in the first year of operations.¹² The HDC Rail

¹¹ Sohikian V.S. ¶ 8.

¹² *See* High Desert Corridor: Investment Grade Ridership & Revenue Forecasts at 15 (March 2017) ("HDC Ridership Study"), available at <https://cms.sbcounty.gov/Portals/50/HSR%20Ridership%20and%20Revenue%20Forecast%20Study.pdf?ver=2020-05-21-135812-543>.

Project thus will enable continuous interstate movement of passengers on the interstate rail system.¹³

The HDC Rail Project will be constructed and operated on a dedicated, grade separated, secure corridor.¹⁴ Based on projections of future market demand, it is anticipated that 10-car electric trains will operate between 6 a.m. and midnight, with headways of 20 minutes to 1 hour depending on the time of day.¹⁵ Trains will operate at speeds of up to 125 miles per hour, resulting in a transit time of under thirty minutes between Palmdale and the Town of Apple Valley.¹⁶

Assuming funding is secured in the next eighteen to twenty-four months, Petitioner anticipates that construction would begin as soon as 2023 and passenger service would begin by 2029.¹⁷ The total cost of project construction is estimated to be \$3.9 billion in year of expenditure dollars.¹⁸ The Authority plans to pursue funding at the appropriate time from FRA grants and/or Build for America Bureau loans.¹⁹

¹³ See *Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston, Tex.*, STB Finance Docket No. 36025, at 6-8 (STB served Jul. 16, 2020); *California High-Speed Rail Authority* at 11-12; *DesertXpress* at 3.

¹⁴ *Sohikian V.S.* ¶ 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* ¶ 14.

¹⁸ *Id.* ¶ 15.

¹⁹ *Id.*

III. The HDC Rail Project will serve an important public need.

Antelope Valley and Victor Valley have experienced substantial population growth in recent years.²⁰ This growth—driven by proximity to Los Angeles and the availability of undeveloped land and affordable housing—is expected to continue for at least the next twenty years.²¹ However, the limited options for direct, fast, and safe connections to the major metropolitan areas isolate the High Desert (Antelope and Victor Valleys) economically, limit the area from which these communities draw businesses, customers, and employees, and reduce the accessibility of job markets for residents.²²

There is currently no passenger rail service linking Antelope Valley and Victor Valley.²³ Instead, all travel must occur via existing two- to six-lane highways, which are increasingly unable to accommodate the existing and projected future traffic attributed to residential and commercial growth in the region.²⁴ Without additional infrastructure, it is estimated that travel time across a 70-mile long route during peak periods will increase to more than two hours by 2040.²⁵

The need for a high-capacity transportation corridor between Victor Valley and Antelope Valley has been recognized by State, regional, and local planners for

²⁰ High Desert Corridor Project Final Environmental Impact Report/Environmental Impact Statement (June 2016) (“EIS/R”) at 1-15.

²¹ *Id.* at 1-15.

²² *Id.* at 1-26.

²³ *Id.* at 1-26.

²⁴ *Id.* at 1-12.

²⁵ *Id.* at 1-15.

decades.²⁶ Between 1992 and 2002, the California Department of Transportation (“Caltrans”), in cooperation with the HDC Steering Committee, prepared a Regionally Significant Transportation Investment Study documenting the need for improved transportation infrastructure to accommodate the expected growth in Antelope Valley and Victor Valley.²⁷ And in 2003, as part of its development of a multimodal transportation plan for the northern Los Angeles County area, Los Angeles County Metropolitan Transportation Authority (“Metro”) identified the High Desert Corridor as a recommended strategy for addressing the volume of traffic traveling between Antelope and Victor Valleys.²⁸

The HDC Rail Project will introduce a safe, reliable, convenient, and productive mode of travel between Victor Valley and Antelope Valley. By providing an alternative mode of passenger transportation, the HDC Rail Project will increase capacity of east-west transportation facilities to accommodate existing and future transportation demand, improve travel safety and reliability within the High Desert region, and contribute to California’s state GHG reduction goals.²⁹

The HDC Rail Project will also provide improved access and connectivity to regional transportation facilities by connecting existing Metrolink service and future California HSR service in Palmdale with the BrightlineWest high speed rail line in

²⁶ *Id.* at 1-4.

²⁷ *Id.* at 1-4.

²⁸ *Id.* at 1-5.

²⁹ *See id.* at 1-10.

the Town of Apple Valley.³⁰ By physically connecting to the Palmdale Transportation Center in Palmdale and the BrightlineWest Station in the Town of Apple Valley, the HDC Rail Project will enable seamless, stop-limited interstate passenger rail service between Los Angeles and Las Vegas.³¹

The corridor between Southern California and Las Vegas is heavily traveled. California residents accounted for 29% of all visitors to Las Vegas in 2015.³² 80 to 85% of these visitors reside in Southern California,³³ meaning more than 15 million round trips were made to Las Vegas by residents of Southern California in 2015.³⁴ More than 90% of these Southern California visitors traveled to Las Vegas by road.³⁵

Almost all visitors driving from California to Las Vegas travel on I-15, which they typically join south of the Cajon Pass, or along SR-18 from Palmdale, before passing Victorville in San Bernardino County and then crossing the Mojave Desert.³⁶ Uncongested drive times between Southern California and Las Vegas range from under four hours from San Bernardino to approximately six hours from parts of Santa Barbara and Imperial Counties.³⁷ Highway traffic peaks on Thursdays and Fridays

³⁰ *Id.* at 1-25 – 1-26.

³¹ *Id.*

³² HDC Ridership Study at 6.

³³ *Id.* at 6.

³⁴ *Id.* at 11.

³⁵ *Id.* at 6.

³⁶ *Id.* at 6.

³⁷ *Id.* at 6. The Imperial Counties are defined by the Las Vegas Convention and Visitors Authority (LVCVA) as the eight counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

northbound to Las Vegas, when many travelers depart, and on Sunday in the southbound direction from Las Vegas for the return leg.³⁸ Nearly one quarter of car trips throughout a typical week are made in one or both directions during these peak times, when journey times can be extended by congestion and unpredictable delays.³⁹

Based on travel demand between California and Las Vegas, a recent study forecasted ridership of 3 million round trips per year during the initial phase of high-speed rail provided between Las Vegas and Palmdale, via the BrightlineWest line and High Desert Corridor Line.⁴⁰ Ridership would increase significantly over the next three years, to approximately 6.5 million round trips in 2024.⁴¹ The addition of California HSR line in 2029 would further increase ridership, rising to approximately 14.0 million round trips by 2050.⁴²

IV. Environmental Review

The HDC Rail Project originated as a piece of a larger multi-modal transportation initiative, called the High Desert Corridor Project (the “HDC Project”).⁴³ The HDC Project began as a proposed highway project connecting the counties of Los Angeles and San Bernardino.⁴⁴ However, it subsequently evolved into

³⁸ *Id.* at 6-7.

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 15.

⁴¹ *Id.* at 15.

⁴² *Id.* at 16.

⁴³ *See* EIS/R at 1-7.

⁴⁴ *See id.* at 1-4.

a 63-mile west-east proposed multipurpose corridor that would connect Antelope Valley with Victor Valley.⁴⁵

Caltrans and Metro were project proponents of the HDC Project, with Caltrans acting as the lead state and federal agency for purposes of the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”).⁴⁶ Numerous state and federal agencies, including the Surface Transportation Board, acted as cooperating agencies.⁴⁷

A Draft Environmental Impact Statement/Report (“EIS/R”) was circulated for public review between September 30 and December 2, 2014.⁴⁸ Several project alternatives were studied in the Draft EIS/R, including two alternatives that incorporated rail feeder/connector service between the cities of Palmdale and Victorville.⁴⁹

Caltrans, in cooperation with Metro, held four public hearings at various locations in November 2014, and the Final EIS/R was released on June 20, 2016.⁵⁰ After studying and considering the various project alternatives, Caltrans identified the Freeway/Expressway Alternative with Rail Feeder/Connector Service as the Preferred Alternative, which consisted of the following elements:

⁴⁵ *See id.* at 1-5.

⁴⁶ *See id.* at 1-1.

⁴⁷ *Id.* at S-20.

⁴⁸ *Id.* at 1-1.

⁴⁹ High Desert Corridor Project Draft Environmental Impact Report/Environmental Impact Statement (Sept. 2014) at 2-1 – 2-2.

⁵⁰ EIS/R at 1-1.

- Construction of a full controlled-access freeway and partial controlled-access at-grade expressway for a total distance of 63 miles linking SR-18 in San Bernardino County and SR-14 in Los Angeles County.
- Construction of a rail feeder/connector service to run between Palmdale and Victorville. This feeder/connector service would connect the XpressWest (now BrightlineWest) System (a planned rail service from Victorville to Las Vegas) with Metrolink at or near the Palmdale Transportation Center. Two stations were proposed—one in Victorville and one in Palmdale.
- Construction of bike paths along segments of the proposed project.
- Green energy production and transmission facilities within the study area footprint.⁵¹

The Final EIS/R listed several factors that supported selection of the Preferred Alternative. With regard to the Rail Feeder/Connector Service element, the Final EIS/R found that rail service between Palmdale and Victorville would contribute to a reduction in the use of fossil fuels and greenhouse gas emissions.⁵² In addition, the proposed rail stations in Palmdale and Victorville⁵³ would help foster high-density and mixed-use developments in these municipalities, which aligned with the smart

⁵¹ *Id.* at 2-62.

⁵² *Id.* at 2-65.

⁵³ Since preparation of the EIS/R, the proposed BrightlineWest high speed rail station has been relocated to the Town of Apple Valley. The HDC Line has therefore been adjusted correspondingly to terminate in the Town of Apple Valley. This minor modification to the project is being considered as part of Federal Railroad Administration and STB's reevaluation of the EIS/R.

growth goals required by California Senate Bill (SB) 375.⁵⁴ The Rail Feeder/Connector Service—which has independent utility and would not necessitate the construction of the highway component of the original project evaluated in the EIS/R—would also help support local economic development in the High Desert and have no effect on the major development plans or expansion projects already underway or on regional development trends in general.⁵⁵

A lawsuit was subsequently brought against Caltrans, alleging that the Agency had failed to comply with CEQA requirements.⁵⁶ The parties ultimately settled the lawsuit on September 12, 2019 and the court dismissed the entire case with prejudice.⁵⁷ The settlement agreement exclusively applies to the Project’s highway element and requires Caltrans to prepare a Supplemental EIS/R prior to acquiring a right-of-way or beginning construction of the highway element.⁵⁸ The Project’s rail element can still proceed under the settlement.

The Authority is now proposing to construct and operate the HDC Rail Project, the rail feeder/connector service element of the HDC Project. The Federal Railroad Administration (“FRA”), in coordination with the Board, is conducting a reevaluation of the current rail project design—which includes some minor changes from the

⁵⁴ EIS/R at 2-65.

⁵⁵ *Id.* at 2-65 – 2-66.

⁵⁶ *Climate Resolve, et al. v. Caltrans*, Los Angeles Superior Court Case No. BS166680.

⁵⁷ *Climate Resolve, et al. v. Caltrans*, No. BS166680 (L.A. Superior Court Sept. 19, 2019) (order granting settlement request and dismissing case with prejudice).

⁵⁸ *Climate Resolve, et al. v. Caltrans*, Stipulation Regarding Settlement and Request for Continuing Jurisdiction, Sept. 12, 2019 at Sec. 1(a).

design evaluated in the HDC Project EIS/R—to determine if the prior findings set forth in the EIS/R remain valid or if new significant or previously unidentified impacts would occur.⁵⁹ A draft reevaluation document was submitted to FRA on April 12, 2021.⁶⁰

DISCUSSION

I. The proposed construction and operation are presumptively in the public interest.

The Interstate Commerce Act incorporates a general presumption that rail construction projects should be approved.⁶¹ As the Board has explained:

[I]n enacting the ICC Termination Act of 1995, Pub. L. No. 104- 88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.⁶²

⁵⁹ See Finance Docket No. 35941, Environmental Comments, Letter from Kathryn K. Floyd, Venable, LLP, to Danielle Gosselin, Acting Director of STB Office of Environmental Analysis (Feb. 23, 2021).

⁶⁰ *Sohikian V.S.* ¶ 16.

⁶¹ See *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996). This was not always the case—prior versions of the Act instructed the Interstate Commerce Commission to evaluate new construction proposals with care and not to approve new construction without finding that it was consistent with the public convenience and necessity. See *Alaska Railroad Corp.—Construction and Operation Exemption—Rail Line between North Pole and Delta Junction, AK* (“*Alaska Railroad Construction*”), STB Finance Docket No. 34658, (STB served Jan. 6, 2010) at 5, n.4 (explaining statutory policy shift from pre-Staggers regime where ICC was “directed to scrutinize rail construction projects closely to prevent excess rail capacity”).

⁶² *The Burlington Northern & Santa Fe Ry. Co.—Construction and Operation Exemption—Seadrift and Kamey, TX*, STB Finance Docket No. 34003, at 4 (STB served June 19, 2001) (emphasis added).

In short, “Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.”⁶³

II. The Board should exempt the construction and operation of the High Desert Corridor Line from the prior approval requirements of 49 U.S.C. § 10901.

The construction and operation of a new rail line requires prior Board approval pursuant to 49 U.S.C. § 10901. However, 49 U.S.C. § 10502(a) provides that the Board “shall” exempt a proposed rail line construction from formal regulation under Section 10901 if it finds that (1) such regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.⁶⁴

The legislative history of the exemption provision, as well as ICC, Board, and court precedent demonstrate that the Board should apply the exemption provision broadly, and that the proposed line is the type of transaction for which the exemption

⁶³ *DesertXpress* at 3; see also *N. Plains Resource Council, Inc. v. STB*, 668 F.3d 1067, 1089-92 (9th Cir. 2011) (affirming Board’s interpretation of § 10901 finding a presumption that new construction should be approved); *Mid-West Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will Cty., IL*, STB Finance Docket No. 34060, at 7 (STB served Mar. 21, 2002) (noting that ICCTA “establishes a clear presumption in favor of rail construction proposals”).

⁶⁴ See, e.g., *DesertXpress* at 3; *Alaska Railroad Construction* at 5-6.

provision was designed.⁶⁵ The Board has been charged with removing as many restrictions as possible and reducing regulation wherever possible.⁶⁶

As explained in detail below, the proposed rail line construction and operation meet the Section 10502 exemption criteria and accordingly should be exempted from the requirement of obtaining Board approval under Section 10901.

1. An exemption will promote the Rail Transportation Policy.

Regulation of the construction and operation of the HDC Rail Project is not necessary to carry out the Rail Transportation Policy expressed in Section 10101. Rather, granting an exemption—as opposed to subjecting the Project to burdensome regulation—will promote several provisions of the Rail Transportation Policy and will not run counter to any of those goals.

First, the HDC Rail Project will help to “ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public.”⁶⁷ Construction and operation of the Line clearly will contribute to the development of a sound rail transportation system by introducing a safe, efficient, comfortable, and convenient transportation option for commuters between the rapidly growing Antelope Valley

⁶⁵ See, e.g., *Am. Trucking Assoc. v. ICC*, 656 F.2d 1115, 1119 (5th Cir. 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).

⁶⁶ H.R. 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”).

⁶⁷ 49 U.S.C. § 10101(4).

and Victor Valley areas and to travelers between Los Angeles and Las Vegas. The Line also will be an effective competitive alternative to highway travel in the High Desert transportation corridor, as well as to air and highway travel between Los Angeles and Las Vegas.

Second, the HDC Rail Project will “foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].”⁶⁸ It will offer an efficient and cost-competitive option for persons traveling between two of California’s fastest growing areas. A high-speed rail connection between Palmdale and the Town of Apple Valley will improve productivity by creating a more convenient and reliable alternative to travel by automobile or bus. It will also facilitate interstate rail travel by providing a needed link between the Los Angeles metropolitan area and Las Vegas. The HDC Rail Project is part of the California State Rail Plan, which envisions seamless, stop-limited interstate rail service between Las Vegas and Los Angeles and beyond.⁶⁹ Indeed, Metro, in partnership with Caltrans, Brightline West, and San Bernardino County Transportation Authority, is developing an operating plan for the HDC Rail Project to integrate the Line into the broader regional and intercity rail network in Southern California, including the planned California HSR network and the BrightlineWest line running to Las Vegas.⁷⁰

⁶⁸ 49 U.S.C. § 10101(5).

⁶⁹ California State Rail Plan at 150, 130.

⁷⁰ See *Sohikian V.S.* ¶ 9.

Third, the HDC Rail Project will “encourage and promote energy conservation.”⁷¹ Introducing high-speed passenger rail service between Palmdale and the Town of Apple Valley will mitigate traffic congestion in a busy and highly congested transportation corridor.⁷² The HDC Rail Project will contribute to a reduction in carbon emissions by eliminating riders from the congested highways linking Victor Valley and Antelope Valley.⁷³

Fourth, granting Petitioner’s request for an exemption will “minimize the need for Federal regulatory control over the rail transportation system” (49 U.S.C. § 10101(2)) by avoiding an unnecessarily cumbersome application process for the construction of the HDC Rail Project. Petitioner’s proposal to construct the line is manifestly consistent with USDOT’s stated policy objective of developing a robust network of high-speed passenger rail lines linking the nation’s major cities, as well as the California High Speed Rail plan for an integrated, state-of-the-art rail system.⁷⁴ No legitimate policy objective would be served by subjecting the proposed HDC Rail Project to a lengthy application and approval process.

⁷¹ 49 U.S.C. § 10101(14).

⁷² EIS/R at S-1.

⁷³ *Id.* at 2-65.

⁷⁴ See United States Department of Transportation, Federal Railroad Administration, *Vision for High Speed Rail in America* at i (April 2009), available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/16536/2009_VISION%20FOR%20HIGH%20-%20SPEED%20RAIL%20IN%20AMERICA.PDF; United States Department of Transportation, Federal Railroad Administration, *Southwest Multi-State Rail Planning Study* at 4 (Sept. 2014), available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/14123/FRA%20SW%20Study%20Summary%20Report.pdf; California State Rail Plan at 3.

Finally, granting the requested exemption will both “reduce regulatory barriers to entry into and exit from the industry”⁷⁵ and “provide for the expeditious handling and resolution of . . . proceedings required or permitted to be brought [before the Board].”⁷⁶ An exemption will minimize the time and administrative expense associated with Petitioner’s proposal, and enable it to construct the HDC Rail Project and introduce an exciting new transportation option to millions of travelers sooner than would be possible if a formal application proceeding under Section 10901 were required. Regulatory barriers to the creation of new rail capacity should be minimized whenever possible in order to promote new transportation options.

In short, the Rail Transportation Policy “favors the construction of new rail lines.”⁷⁷ Indeed, the Board (and the ICC before it) have repeatedly found that new rail construction projects promote the Rail Transportation Policy by providing rail service options, allowing for competition, and encouraging the provision of more efficient transportation service.⁷⁸ Granting the requested exemption will promote the

⁷⁵ 49 U.S.C. § 10101(7).

⁷⁶ 49 U.S.C. § 10101(15).

⁷⁷ *Gateway Western Ry. Co.—Construction Exemption—St. Clair County, IL; Gateway Western Ry. Co.—Petition Under 49 U.S.C. 10901(d)*, STB Finance Docket Nos. 32158 and 32158-1, 1993 ICC LEXIS 88, at *10 (ICC served May 11, 1993) (noting the Board has “made findings in a series of construction [exemption] cases that the rail transportation policy favors the construction of new rail lines”).

⁷⁸ *See, e.g., Palmetto Railways—Construction and Operation Exemption—In Berkeley Cty., SC*, STB Finance Docket No. 36095, at 2-3 (STB served July 22, 2019); *California High-Speed Rail Authority* at 22-23; *DesertXpress*, at 3-4; *Alaska Railroad* at 5-6; *Arizona Eastern Ry., Inc.—Construction Exemption—In Graham County, AZ*, STB Finance Docket No. 34836, at 3 (STB served June 15, 2009); *Itasca County Regional Rail Authority—Petition for Exemption—Construction of a Line of Railroad in Itasca County, MN*, STB Finance Docket No. 34992, at 3 (STB served

goals of the Rail Transportation Policy without generating any effects that would be counter to Section 10101's mandates.

2. Regulation of the HDC Rail Project is not needed to protect shippers from the abuse of market power.

The second element of Section 10502's standard for granting an exemption is stated in the alternative: either "the transaction or service is of limited scope" or formal regulation of the transaction or service "is not needed to protect shippers from the abuse of market power."⁷⁹ The proposed construction and operation of the HDC Rail Project clearly satisfies the latter test.

Regulation of the HDC Rail Project is unnecessary to protect freight shippers from an abuse of market power because Petitioner will not offer any freight transportation service. Likewise, construction of the Line does not pose a threat to rail passengers, because there currently exists no passenger rail service between Victor Valley and Antelope Valley.

Nor is regulation of the Line needed to protect persons traveling between Palmdale and the Town of Apple Valley via other modes of transportation from an abuse of market power. To the contrary, the Line will *enhance* the competitive options available to both intrastate and interstate travelers, by introducing a safe, efficient,

Sept. 8, 2008); *Southwest Gulf R.R. Co.—Construction and Operation Exemption—Medina County, TX* ("Southwest Gulf R.R. Co."), STB Finance Docket No. 34284, at 2 (STB served May 19, 2003); *Entergy Arkansas and Entergy Rail—Construction and Operation Exemption—White Bluff to Pine Bluff, AR*, STB Finance Docket No. 33782, at 3 (STB served May 4, 2000); *Missouri Pacific R.R. Co—Construction and Operation Exemption—Harris and Chambers Counties, TX*, 1995 WL 385792 at *4 (STB served June 30, 1995).

⁷⁹ 49 U.S.C. § 10502(a)(2).

comfortable and convenient new rail service in the High Desert Corridor.⁸⁰ As discussed above, approximately 90 percent of all travel between Southern California and Las Vegas occurs by road. The only currently available alternative to driving is flying.

The HDC Rail Project will offer an attractive competitive alternative to travel by automobile, bus, and, for passengers traveling from Las Vegas to Los Angeles, air. Riding a HDC train will enable travelers to avoid the delays, stress, and inconvenience of driving along the congested highways in the High Desert region. The planned dedicated, grade separated, secure corridor will enable the HDC Rail Project to provide a safe, convenient, and less stressful transportation service with consistent on-time performance.

As these facts demonstrate, the introduction of a high-speed passenger rail option serving the High Desert Corridor will not result in, or enable, any abuse of market power.⁸¹ Because the Project meets the goals of the Rail Transportation Policy and does not threaten any abuse of market power, the Board should grant Petitioner

⁸⁰ See *DesertXpress* at 3 (approving exemption for new passenger line that would “provid[e] additional transportation options”); *Southwest Gulf R.R. Co.*, at 3 (concluding that “the proposed transaction will enhance competition by providing . . . a rail transportation option to go along with existing motor carrier options”).

⁸¹ Because regulation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is of limited scope. See, e.g., *DesertXpress* at 4 n.5 (“Given our finding under 49 U.S.C. § 10502(a)(2)(B) regarding the probable effect of the proposed Line on market power, we need not determine under 49 U.S.C. § 10502(a)(2)(A) whether the transaction is limited in scope.”); *Missouri Pacific R.R. Co.* at *4 (“The transaction appears to be of limited scope . . . but we need not make that finding here because regulation is not necessary to protect shippers from market power abuse.”).

an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the Uinta Basin Railway.

III. The Board should exempt the HDC Rail Project from regulation pursuant to Subtitle IV.

The Board should also grant Petitioner's request for an exemption from all of 49 U.S.C. Subtitle IV. The Board's evaluation of this element of the Petition is subject to the same statutory standards as Petitioner's request for an exemption from Section 10901 to construct and operate the HDC Rail Project.⁸² The Board and its predecessor have granted exemptions from Subtitle IV for a variety of rail services and transactions, including passenger rail operations.⁸³ The HDC Rail Project should likewise be exempted from ongoing Board regulation.

⁸² See 49 U.S.C. § 10502(a). See also, e.g., *Great Canadian Railtour Co. Limited D/B/A Rocky Mountaineer – Petition for Exemption from 49 U.S.C. Subtitle IV* (“*Great Canadian Railtour*”), STB Finance Docket 35851, at 4 (STB served June 3, 2015); *Logansport & Eel River Short-Line Co., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket 31367, 1989 ICC LEXIS 132 at * 2 (May 1, 1989).

⁸³ See, e.g., *Great Canadian Railtour* (passenger excursion service using Amtrak train and engine crews); *The Pullman Sleeping Car Co. LLC–Petition for Exemption from 49 U.S.C. Subtitle IV* (“*Pullman*”), STB Finance Docket 35738 (STB served Feb. 5, 2015) (passenger service on sleeping, dining, and lounge cars as part of Amtrak train consists); *American Orient Express Ry. Co. LLC – Petition for Declaratory Order*, STB Finance Docket 34502 (STB served Dec. 29, 2005) (excursion service using Amtrak locomotives and Amtrak train and engine crews); *Metro North Commuter R.R. Co. – Acquisition Exemption – The Maybrook Line* (“*Metro North*”), STB Finance Docket 32639, 1995 WL 11215 (Jan. 13, 1995) (commuter rail line); *Cape Cod & Hyannis R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV* (“*Cape Cod & Hyannis*”), STB Finance Docket 31229, 1988 ICC LEXIS 82 (March 21, 1988) (seasonal passenger and tour railroad service); *Alaska R.R. Co. – Exemption – From 49 U.S.C. Subtitle IV* (“*Alaska Railroad Subtitle IV Exemption*”), STB Finance Docket 30740, 1985 ICC LEXIS 2 (Dec. 31, 1985) (Alaska passenger service with a modified winter schedule).

1. Economic regulation of the HDC Rail Project is not necessary to carry out the Rail Transportation Policy.

The Board should exempt the HDC Rail Project from ongoing regulation pursuant to Subtitle IV because such regulation is not necessary to carry out the Rail Transportation Policy set forth at 49 U.S.C. § 10101.⁸⁴ Indeed, the Board has found that exempting passenger operators from Subtitle IV regulation promotes (rather than undermines) the nation’s Rail Transportation Policy objectives.⁸⁵ Formal regulation of operations on the HDC Rail Project is likewise unnecessary “because no vital interests of shippers (here, the traveling public), competition, or communities will be adversely affected.”⁸⁶

Granting the requested exemption will “allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.”⁸⁷ The HDC Rail Project will face robust competition from both air carriers and bus operators for passengers traveling between Las Vegas and Los Angeles. Travelers also have the option to make the journey by car—indeed, the majority of trips between Palmdale and Apple Valley, and between Las Vegas and

⁸⁴ See footnote 78 (and cases cited therein).

⁸⁵ See *Metro North*, at * 3 (“Regulation of [the carrier] is also not necessary to carry out the goals of the RTP. Rather, the exemption will facilitate these goals.”); *Cape Cod & Hyannis* (“[E]xemption would foster the rail transportation policy by expediting regulatory decisions, minimizing the need for Federal regulatory control over the rail transportation system, . . . promoting an efficient and sound transportation system and encouraging efficient management.”).

⁸⁶ See *Alaska Railroad Subtitle IV Exemption* at * 5.

⁸⁷ 49 U.S.C. § 10101(1).

Los Angeles, will continue to be via automobile.⁸⁸ As USDOT's *National Rail Plan* states, the success of high-speed passenger rail service is dependent upon the degree to which they can deliver safe, reliable and convenient service at a price that is competitive with other available transportation options.⁸⁹ The rates, schedules and service offerings of the HDC Rail Project's prospective competitors (airlines and buses) are not subject to federal economic regulation. There is no legitimate policy reason to impose such regulatory burdens on Petitioner.⁹⁰ The HDC Rail Project's operations will, of course, be subject to safety regulation by FRA.

Exempting the HDC Rail Project from Subtitle IV will "minimize the need for Federal regulatory control over the rail transportation system."⁹¹ In several prior decisions, the agency has found that an exemption for passenger rail services would promote this goal of the Rail Transportation Policy.⁹² Subjecting day-to-day operations of the HDC Rail Project to ongoing economic regulation would not produce any public benefits. To the contrary, burdening the HDC Rail Project (and other potential high-speed rail projects) with unnecessary regulatory requirements could

⁸⁸ HDC Ridership Study at 126.

⁸⁹ See United States Department of Transportation, Federal Railroad Administration, *Preliminary National Rail Plan* (October 2009) at 7.

⁹⁰ See, e.g., *Great Canadian Railtour* at 5 ("Requiring Rocky Mountaineer to come to the Board for authority each time it proposes to change its service frequencies would be an unnecessary burden."); *Pullman* at 4 (same).

⁹¹ 49 U.S.C. § 10101(2).

⁹² See, e.g., *Great Canadian Railtour* at 4 (exempting passenger service is consistent with Section 10101(2) because regulatory control is unnecessary); *Pullman* at 4 (same). See also *Metro North* at *3 ("Exemption will expedite regulatory decisions...").

undermine the federal policy of encouraging the development of a network of high-speed passenger rail lines across America.⁹³

The Rail Transportation Policy directs the Board to exercise its authority in a manner that “ensure[s] the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the general public.”⁹⁴ The introduction of a high-speed passenger rail system in the High Desert Corridor—connecting to planned California HSR service and the BrightlineWest high speed rail system—will, by definition, contribute to the development of a sound rail transportation system.⁹⁵ It will also address a critical need for connectivity in the interstate rail network. Granting the requested Subtitle IV exemption will allow the HDC Rail Project to compete more effectively with other (unregulated) modes of transportation. For the same reasons, exempting the HDC Rail Project from Subtitle IV regulation will “foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].”⁹⁶

⁹³ See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 5, Maps 1 and 9.

⁹⁴ 49 U.S.C. § 10101(4).

⁹⁵ See *Metro North* at *3 (transaction at issue “will also help ensure the development and continuation of a sound rail transportation system to meet the needs of the public.”); *BG & CM R.R., Inc. – Exemption from 49 U.S.C. Subtitle IV*, STB Finance Docket 34399, at 3 (STB served Oct. 17, 2003) (exemption will “ensure the development and continuation of a sound rail transportation system with effective competition with other modes of transportation to meet the needs of the public.”).

⁹⁶ See, e.g., *Great Canadian Railtour* at 5 (“an exemption would foster sound economic conditions...”); *Pullman* at 4 (same).

As discussed above, the HDC Rail Project also will promote the Rail Transportation Policy goal of energy conservation.⁹⁷ High-speed passenger rail service between Palmdale and the Town of Apple Valley will mitigate traffic congestion in a busy and heavily traveled transportation corridor, and will consume less energy than travel by air or highway. The Board has previously found that exempting passenger rail services promotes energy conservation.⁹⁸

As is often the case in connection with proposed exemptions involving passenger operations, other aspects of the Rail Transportation Policy would not be adversely affected by granting the requested exemption.⁹⁹ Therefore, the Board should find that ongoing regulation of the HDC Rail Project pursuant to Subtitle IV is not necessary to promote the Rail Transportation Policy.

2. Economic regulation of the HDC Rail Project is not needed to protect shippers from the abuse of market power.

In *Pullman*, the Board found that the proposed service would not threaten an abuse of market power because “customers have many other transportation options available to them (*i.e.*, flights, charter bus trips, etc.).”¹⁰⁰ The same conclusion is

⁹⁷ See 49 U.S.C. § 10101(14).

⁹⁸ *Orange County Transportation Authority et al. – Acquisition and Exemption – The Atchison, Topeka & Santa Fe Ry. Co.*, STB Finance Docket 32173, at 4-5 (STB served March 12, 1997).

⁹⁹ See *Great Canadian Railtour* at 5; see also *Pullman* at 4; *Cape Cod & Hyannis* at *4.

¹⁰⁰ *Pullman* at 4; see also *Great Canadian Railtour* at 5 (“[S]ervice would not result in market power abuse as the record indicates that customers have many other transportation options available to them (*i.e.*, other passenger services, travel by air carrier, charter bus trips, etc.); *Cape Cod & Hyannis* at * 4 (“[C]arriers compete with other passenger modes”); *Alaska Railroad Subtitle IV Exemption* at * 6 (“Moreover,

warranted here. The HDC Rail Project will not result in any competitive harm—to the contrary, it will enhance competition by introducing a safe, efficient, comfortable, and convenient new transportation alternative in the High Desert region and beyond. The HDC Rail Project will face competition from airlines and buses for those travelers who choose not to drive between Los Angeles and Las Vegas. Economic regulation of the HDC Rail Project’s rates, schedules, station stops and service offerings is not necessary to prevent an abuse of market power, because it will not possess any market power.

In short, the Board should exempt the HDC Rail Project from all regulatory requirements under Subtitle IV of Title 49.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board grant this Petition and issue a decision (1) exempting the construction and operation of the HDC Rail Project from the prior approval requirements of 49 U.S.C. § 10901; and (2) exempting the HDC Rail Project from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences.

Respectfully submitted,



Kathryn Kusske Floyd

Dated: September 24, 2021

since the affected public sector has transportation alternatives in both an all-weather highway and superior air service between Anchorage and Fairbanks, regulation is not necessary to protect train passengers from an abuse of market power”).

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35941

**HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY
-CONSTRUCTION AND OPERATION EXEMPTION-
-PASSENGER RAIL LINE IN LOS ANGELES AND
SAN BERNARDINO COUNTIES, CA**

PETITION FOR EXEMPTION

EXHIBIT A



High Desert Corridor Joint Powers Authority



E-220 HIGH DESERT CORRIDOR

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 35941

HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY -AUTHORITY TO CONSTRUCT AND OPERATE- -PASSENGER RAIL LINE IN LOS ANGELES AND SAN BERNARDINO COUNTIES, CA

PETITION FOR EXEMPTION

VERIFIED STATEMENT OF ARTHUR SOHIKIAN IN SUPPORT OF PETITIONER'S PETITION FOR EXEMPTION

1. My name is Arthur Sohikian. I am the Executive Director of the High Desert Corridor Joint Powers Authority (the "Authority"). My office is located at 385 N. Arrowhead Avenue, 2nd Floor, San Bernardino, CA 92415-0130.
2. I have been the Executive Director of the Authority since October 29, 2020. I am responsible for the daily operation of the Joint Powers Authority as directed by the Authority Board of Directors from San Bernardino and Los Angeles Counties.
3. As Executive Director, I have been actively involved in and am familiar with the Authority's planned construction and operation of an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, CA (the "HDC Rail Project").

BOARD OF DIRECTORS

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Gabriel Reyes
Mayor, City of Adelanto

Scott Nassif
Council Member, Town of Apple Valley

Debra Jones
Mayor, City of Victorville

4. I am submitting this Verified Statement in support of the Petition for Exemption filed by the Authority seeking an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the HDC Rail Project and from regulation pursuant to 49 U.S.C. Subtitle IV. This Verified Statement is based on firsthand knowledge from my involvement, as the Executive Director of the Authority, in the planning of the Project.

5. The Authority was formed in 2006 to support the development of a multipurpose transportation corridor connecting the Palmdale/Lancaster area to the cities of Adelanto, Victorville, Hesperia, and Apple Valley. Members of the Authority include the counties of San Bernardino and Los Angeles, the Town of Apple Valley, and the cities of Adelanto, Victorville, Lancaster, and Palmdale.

6. The HDC Rail Project originated as a piece of a larger multi-modal transportation initiative proposed by the California Department of Transportation (“Caltrans”) and LA Metro, called the High Desert Corridor Project (the “HDC Project”). This project consisted of a 63-mile west-east proposed multipurpose corridor that would connect Antelope Valley with Victor Valley and included, among other things, both a rail and highway component. A final environmental impact statement/report (“EIS/R”) for the HDR Project was issued in 2016 for purposes of meeting the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

7. After a legal challenge to the HDC Project was brought against the Caltrans, Caltrans entered into a settlement agreement that requires it to prepare a Supplemental EIS/R prior to acquiring a right-of-way or beginning construction of the highway element of the HDC Project. The settlement does not apply to the rail element of the HDC Project, and the Authority is continuing to pursue development of the HDC Rail Project.

8. The HDC Rail Project consists of an approximately 54-mile high-speed passenger rail line between Palmdale and the Town of Apple Valley, California. In Palmdale, the HDC Rail Project will physically connect to the Palmdale Transportation Center, a multi-modal transportation center featuring a Metrolink rail station, a local bus hub, commuter bus, and future California HSR service north to the Central Valley and San Francisco and south to Burbank, Los Angeles, and Anaheim. In the Town of Apple Valley, the rail line will physically connect to the proposed BrightlineWest system, which will provide

service from Victor Valley to Las Vegas, Nevada. The HDC Rail Project will be interoperable with both the California HSR and Brightline West systems. It thus will enable continuous interstate movement of passengers on the interstate rail system.

9. The HDC Rail Project is part of the California State Rail Plan, and LA Metro, in partnership with Caltrans, Brightline West, and San Bernardino County Transportation Authority, is developing an operating plan for the HDC Rail Project to integrate the Line into the broader regional and intercity rail network in Southern California, including the planned California HSR network and the Brightline West line running to Las Vegas.

10. In 2017, the Authority commissioned Steer Davies Gleave (SDG) to produce investment grade ridership and revenue forecasts for high-speed rail services using the proposed HDC Rail Project. That study concluded that the HDC Rail Project will capture 11% of persons traveling interstate between Southern California and Las Vegas in the first year of operations and that ridership would significantly increase in subsequent years.¹

11. The HDC Rail Project will be constructed and operated on a dedicated, grade separated, secure corridor. Based on projections of future market demand, it is anticipated that 10-car electric trains will between 6 a.m. and midnight, with headways of 20 minutes to 1 hour depending on the time of day. Trains will operate at speeds of up to 125 miles per hour, resulting in a transit time of under thirty minutes between Palmdale and the Town of Apple Valley.

12. The Authority will be responsible for constructing the tracks, stations, platforms, and other infrastructure along the route. When completed, it is anticipated that the HDC Rail Project will be operated and maintained by a third-party operator.

13. At this time, the Authority intends to obtain the common carrier obligation to operate the rail line from the Board. If and when the Authority seeks to transfer its operational rights to a third party, it will comply with all applicable Board requirements and procedures.

¹ See High Desert Corridor: Investment Grade Ridership & Revenue Forecasts at 15-16 (March 2017) (“HDC Ridership Study”), available at <https://cms.sbcounty.gov/Portals/50/HSR%20Ridership%20and%20Revenue%20Forecast%20Study.pdf?ver=2020-05-21-135812-543>.

14. Assuming funding is secured in the next eighteen to twenty-four months, it is anticipated that construction would begin as soon as 2023 and passenger service would begin by 2029.

15. The total cost of project construction is estimated to be \$3.9 billion in year of expenditure dollars. The Authority plans to pursue funding at the appropriate time from FRA grants and/or Build for America Bureau loans.

16. The Federal Railroad Administration ("FRA"), in coordination with the Board, is conducting a reevaluation of the current rail project design—which includes some minor changes from the design evaluated in the HDC Project EIS/R—to determine if the prior findings set forth in the EIS/R remain valid or if new significant or previously unidentified impacts would occur. A draft reevaluation document was submitted to FRA on April 12, 2021.

VERIFICATION

I, Arthur Sohikian, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on this 23rd day of September, 2021.


Arthur Sohikian

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of September 2021, I caused a copy of the foregoing Petition for Exemption to be served on all parties of record by email or first-class mail, postage prepaid.



Margaret K. Fawal