

May 29, 2020

300676

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
May 29, 2020
Part of
Public Record

Re: *Seven County Infrastructure Coalition—Construction and Operation—
in Utah, Carbon, Duchesne, and Uintah Counties, UT*, STB Docket No.
FD 36284

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding the Seven County Infrastructure Coalition (“Coalition”)’s Petition for Exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the proposed Uinta Basin Railway.

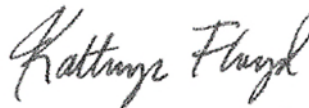
The Coalition has electronically paid the filing fee of \$92,700 pursuant to 49 C.F.R. § 1002.2(f)(12)(iii). However, the Coalition seeks a waiver of the filing fee based on the fact that it is a local government entity. *See* 49 C.F.R. § 1002.2(e)(1). The Coalition is an independent political subdivision of the State of Utah whose mission is to improve the quality of life through cooperative regional planning, increased economic opportunity and public services, and sustainable implementation. The Coalition’s member counties include Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties.

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

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Sincerely,



Kathryn K. Floyd

*Counsel for Seven County
Infrastructure Coalition*

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

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

PETITION FOR EXEMPTION

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Dated: May 29, 2020

Filing Contains Color Images

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

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

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, Seven County Infrastructure Coalition (the “Coalition” or “Petitioner”) submits this Petition for Exemption (the “Petition”) from the prior approval requirements of 49 U.S.C. § 10901 for Petitioner to construct and operate an approximately 85-mile rail line connecting two termini in the Uinta Basin near South Myton Bench, Utah, and Leland Bench, Utah, to the national rail network at Kyune, Utah (the “Uinta Basin Railway”).

The proposed Uinta Basin Railway (or “Project”) would connect the Uinta Basin to the interstate rail network, giving shippers within the Basin multi-modal options for the movement of freight. The Railway will thus provide Uinta Basin businesses the opportunity to access new markets and support economic development and the general welfare of citizens and communities in northeastern Utah; further the development of a sound rail transportation system with effective competition between rail and other modes of transportation; and foster sound economic conditions in transportation and effective competition between differing modes of transportation. As explained by Petitioner below, because regulation of the Project is not needed to further the goals of the Rail Transportation Policy or protect shippers

from abuse of market power, the Board should exempt the Project from the prior approval requirements of Section 10901.

The exemption is subject to the completion of environmental review by the Board's Office of Environmental Analysis ("OEA").

This Petition is supported by the Verified Statement of Michael J. McKee (attached hereto as Exhibit A).

BACKGROUND

I. Petitioner

The Coalition is an independent political subdivision of the State of Utah whose member counties include Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties.¹ The Coalition was formed to, among other things, identify and develop infrastructure projects that will promote resource utilization and development, balancing environmental values and natural features, for the overall general welfare of the Coalition's seven member counties, including through planning, construction, and maintenance of public facilities.²

The Coalition does not intend to operate the Uinta Basin Railway itself.³ Rather, it intends to enter into a contract with an existing, experienced railroad to

¹ Verified Statement of Michael J. McKee in Support of Petition for Exemption ("V.S.") ¶ 5.

² *Id.*

³ *Id.* ¶ 20.

provide common carrier rail service.⁴ The Coalition has entered into a preliminary Memorandum of Understanding (“MOU”) with Drexel Hamilton Infrastructure Partners (“Drexel Hamilton”) and Rio Grande Pacific Corporation (“Rio Grande”).⁵ In an amendment to the MOU, which will be finalized shortly, the Ute Indian Tribe of the Uintah and Ouray Reservation (“Ute Tribe”) has agreed to join the MOU as a party.⁶ The MOU outlines the respective preliminary roles of the parties in development of the Project and requires an additional long-term agreement that will establish the full public private partnership between the parties.⁷ It currently is anticipated that, subject to further agreement, Drexel Hamilton will be responsible for financing and commercialization of the Project and Rio Grande will be responsible for operations and maintenance of the Uinta Basin Railway.⁸ The Coalition anticipates that it will remain responsible for project planning, completion of the environmental review and permitting processes, and obtaining authority to construct

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

the Railway.⁹ The Coalition also anticipates that the Ute Tribe will become an equity partner in the Project.¹⁰

The Coalition has received funding from the Utah Permanent Community Impact Fund Board (“CIB”) for planning and studies needed for the environmental review and permitting processes for the Project.¹¹ The CIB provides loans and grants, funded by mineral lease royalties returned to the state by the federal government, to counties, cities, towns, and other political subdivisions that are impacted by mineral resource development on federal lands.¹² The Project is eligible for CIB funding because it involves the planning, construction and maintenance of public facilities, and provision of public services.¹³

II. The Uinta Basin Railway

The Uinta Basin Railway would connect the Uinta Basin in northeastern Utah to the interstate common-carrier rail network using a route that would provide shippers in the Basin with a viable alternative to trucking.¹⁴ Presently, local

⁹ *Id.* At this time, the Coalition intends to obtain the common carrier obligation to operate the rail line from the Board. If and when the Coalition seeks to transfer its operational rights to a third party, it will comply with all applicable Board requirements and procedures. *Id.* ¶ 21.

¹⁰ *Id.* ¶ 20.

¹¹ *Id.* ¶ 22.

¹² *See* 30 U.S.C. § 191.

¹³ *Id.*

¹⁴ V.S. ¶ 13.

industries rely exclusively on trucking to transport goods into and out of the Uinta Basin.¹⁵ By providing an economic alternative to trucking, the proposed Project would allow Uinta Basin producers to access new markets, thereby enhancing the quality of life for the residents of the Uinta Basin and its communities.¹⁶

As shown in Exhibit B, the proposed rail line would span a linear distance of approximately 80-103 miles, depending on the route approved, and would consist of a single track constructed of continuous-welded rail.¹⁷ The majority of the right-of-way for the Project would be approximately 100 feet wide.¹⁸ However, in certain areas where greater cut-and-fill work is needed to traverse rugged topography, the right-of-way will be wider.¹⁹ In addition to construction of the rail line and associated earthwork, the Project will also involve construction of access roads, tunnels, communications towers, road crossings, culverts, and stream crossings.²⁰

The Coalition's preferred alternative, the Whitmore Park Route, would begin at two termini near South Myton and Leland Bench, Utah and would intersect Indian Canyon approximately two miles south of Duchesne, Utah.²¹ It would then travel

¹⁵ *Id.* ¶ 9.

¹⁶ *Id.* ¶ 13.

¹⁷ *Id.* ¶ 15.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* ¶ 16.

southwest along Indian Creek parallel to U.S. Highway 191 and ultimately connect to an existing line owned by Union Pacific near Kyune, Utah.²² The Whitmore Park Route would span total linear distance of 87.7 miles and would cross private lands, lands managed by state and federal agencies, and trust lands of the Ute Tribe.²³

While the Uinta Basin Railway will primarily be used to ship crude oil and fracking sand, shipments are also expected to include agricultural products, pipe, oilfield tubular steel products, building products, industrial materials, and other bulk commodities.²⁴ Fracking sand and crude oil are expected to be shipped in unit trains, while other goods would be shipped in manifest carloads added to crude oil or fracking sand unit trains.²⁵ Separate manifest trains are not expected to be operated on the Uinta Basin Railway.²⁶

The frequency of traffic on the Uinta Basin Railway is expected to vary depending upon a number of factors, including, but not limited to, general domestic

²² *Id.* BNSF also has trackage rights on the UP line. *Id.*

²³ *Id.* The Ute Tribe has stated that the Project represents a “unique opportunity for the Tribe,” and the Coalition has been working closely with the Ute Tribe to advance the Project. Letter from Luke Duncan, Ute Indian Tribe, Chairman, to Victoria Rutson, Surface Transportation Board, Office of Environmental Analysis, dated May 14, 2019, available at [https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/E1C8DE74724253628525844D0042B741/\\$File/EI-26551.pdf?OpenElement](https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/E1C8DE74724253628525844D0042B741/$File/EI-26551.pdf?OpenElement). As noted above, the Coalition anticipates that the Ute Tribe will become an equity partner in the Project. V.S. ¶ 20.

²⁴ *Id.* ¶ 17.

²⁵ *Id.*

²⁶ *Id.*

and global economic conditions, commodity pricing, and the strategic and capital investment decisions of oil producers and their customers.²⁷ It is anticipated that much of the outbound traffic on the Uinta Basin Railway will be shipped to refineries along the Gulf Coast.²⁸

As part of the route development process, the Coalition and its consultants initially identified twenty-nine alternative routes.²⁹ After conducting a baseline review of the proposed alternatives and considering feedback from cooperating agencies, tribes, and other stakeholders, OEA identified three reasonable and feasible alternatives to be carried forward for detailed analysis in its Environmental Impact Statement (EIS).³⁰ Those alternatives include: the Indian Canyon Alternative, the Whitmore Park Alternative, and the Wells Draw Alternative.³¹ Other alternatives

²⁷ *Id.* ¶ 18.

²⁸ *Id.* The Coalition has provided reasonably foreseeable traffic projections to OEA as part of the environmental review process. These projections were based on conditions existing before the ongoing COVID-19 pandemic. The Coalition anticipates that any impacts caused by the unprecedented pandemic will be temporary in nature and that, following the pandemic, these previous historical conditions will return absent construction of the Uinta Basin Railway. *Id.* ¶ 18 n.2.

²⁹ See Notice of Availability of the Final Scope of Study for the Environmental Impact Statement for Seven County Infrastructure Coalition—Rail Construction & Operation—in Utah, Carbon, Duchesne, and Uintah Counties, Utah, 84 Fed. Reg. 68274, 68276 (Dec. 13, 2019). During the scoping period, a thirtieth conceptual route was developed as a refinement to the Indian Canyon Alternative route. *Id.* at 68276, 68278.

³⁰ *Id.* at 68274.

³¹ *Id.*

were removed from further consideration because they would not be technically or economically feasible to construct and operate, they exceeded established engineering standards for safe and efficient operation, they failed to satisfy the project purpose and need, or they would have disproportionate impacts to the environment.³² Importantly, all three alternative routes under consideration would provide shippers access to both UP and BNSF Railway Company lines.³³

The Coalition currently anticipates that construction of the Uinta Basin Railway will begin in 2021.³⁴ Once begun, construction is expected to last between twenty and twenty-eight months for either the Whitmore Park Alternative or the Indian Canyon Alternative, depending on weather conditions.³⁵ If the Wells Draw Alternative is selected, construction would take slightly longer, lasting thirty-two to forty-eight months, depending upon weather conditions.³⁶ The total cost of construction for the Coalition's preferred alternative is expected to range from approximately \$1.2 to \$1.5 billion.³⁷

³² *Id.*

³³ *Id.*; V.S. ¶ 16.

³⁴ V.S. ¶ 19.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

III. The Project serves an important public need.

Key economic activities in the Uinta Basin, including farming, ranching, oil and gas production, and mineral extraction, depend heavily on the transportation of goods and commodities in and out of the region.³⁸ Farmers and ranchers, for example, ship alfalfa, hay, grain, and livestock to areas across the country.³⁹ Oil and gas producers bring in fracking sand, tubular steel products, and other production inputs.⁴⁰ But despite the importance of freight transportation to the region, trucking is the only mode of freight transportation available to these local industries.⁴¹

The geography of the Uinta Basin, bounded by high mountains or plateaus, is the primary contributor to the limited transportation modes within the Basin.⁴² There is no viable shipping watercourse in the Uinta Basin, and the area's rugged, mountainous terrain historically has discouraged robust infrastructure development.⁴³ In the 19th and 20th centuries, transcontinental railway lines purposely were constructed *around* the Basin to avoid the high construction and

³⁸ *Id.* ¶¶ 7-8.

³⁹ *Id.* ¶ 8.

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 9.

⁴² *Id.*

⁴³ *Id.*

operating costs needed to transverse the mountains and plateaus circling the region.⁴⁴

Thus, at present, all goods produced or consumed in the Basin must be transported by trucks on two-lane highways that cross high mountain passes, including Daniels Summit at 8,020 feet when traveling to Salt Lake City, Utah, Douglas Pass at 8,268 feet when traveling to Grand Junction, Colorado, and Indian Canyon Pass at 9,100 feet when traveling to Price, Utah.⁴⁵ Disruptions due to snow and ice occur during the winter months, and the mixture of heavy truck traffic and passenger cars on these roads poses safety concerns, especially during inclement conditions.⁴⁶ In addition, trucks are not a cost-effective transportation option for heavy and bulk commodity movements and, thus, generally are used only for short-haul movements of these commodities.⁴⁷ The lack of alternative transportation options thus hinders the local industries' access to the national marketplace.⁴⁸

Oil producers, in particular, have been disadvantaged by existing transportation constraints.⁴⁹ Trucking oil to distant markets is not only expensive

⁴⁴ *Id.*

⁴⁵ *Id.* ¶ 10. There are no freeways in and out of the Uinta Basin. *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* ¶ 11.

⁴⁸ *Id.*

⁴⁹ *Id.* ¶ 12.

but cost prohibitive for most Uinta Basin producers.⁵⁰ Currently, the only nearby market that Uinta Basin oil producers can economically access by truck is the Salt Lake City market.⁵¹ But Salt Lake refiners are already receiving the maximum amount of Uinta Basin crude oil that they can handle—around 80-90,000 barrels of oil per day (bopd)⁵²—and have no known plans to expand their refining capacity. Thus, the lack of rail access has effectively capped oil production in the Basin.⁵³

Given the significant role of the oil and gas sector in the Uinta Basin's economy, this de facto cap on oil production has considerable consequences throughout the Coalition's seven member counties and the entire State of Utah. A 2013 Utah Department of Transportation (UDOT) study, for example, projected that transportation constraints would result in \$8 to 29 billion, in present-value terms, in statewide production losses over a 30-year period.⁵⁴ Over the same period,

⁵⁰ *Id.* As of 2017, trucking costs, on average, over four times more than rail transportation. See U.S. Bureau of Transportation Statistics, Average Freight Revenue per Ton-Mile, *available at* <https://www.bts.gov/content/average-freight-revenue-ton-mile>.

⁵¹ V.S. ¶ 12.

⁵² *Id.* This Petition discusses the amounts of oil being delivered to Salt Lake City refiners prior to the COVID-19 pandemic. It is anticipated that the market impacts of the pandemic will be temporary and that, following the pandemic, market conditions will return to these baseline levels. V.S. ¶ 12 n.1.

⁵³ *Id.*

⁵⁴ Uinta Basin Energy and Transportation Study at 111 (April 2013), available at <https://www.udot.utah.gov/projectpages/TIGSOWNER.gf?f=App%20F%20-%20UBETS%20Final%20Report%20April%202013%20-%20Rev%201.pdf> (“UBETS

transportation constraints were forecast to result in a loss of 27,000 full-time-equivalent jobs.⁵⁵

The Uinta Basin Railway would close the Basin’s surface transportation gap by directly connecting the region to the national rail network. This connection would give shippers an additional option for freight transportation in and out of the Uinta Basin, eliminating longstanding transportation constraints. By providing a safe, reliable, and efficient mode of transportation and increasing competition between differing transportation modes, the Uinta Basin Railway will provide local industries the opportunity to access new markets and increase their competitiveness in the national marketplace. While many factors beyond access to rail would determine the level of oil production in the Basin, access to the interstate network would enable local producers to increase their output under appropriate market conditions. The removal of transportation constraints will also benefit mining companies, ranchers, farmers, and other local industries.⁵⁶

Development of the Uinta Basin Railway also is expected to create local jobs and reduce unemployment in the Basin.⁵⁷ As of February 2020, seasonally adjusted unemployment rates in the Coalition’s seven member counties ranged from 2.9-6.2%,

2013 Study”). This is equivalent to \$14.8 to \$2.8 billion in undiscounted production losses over a 30-year period. *Id.*

⁵⁵ *Id.* at 5.

⁵⁶ V.S. ¶ 23.

⁵⁷ *Id.* ¶ 24.

notably higher than the statewide average unemployment rate of 2.5%.⁵⁸ And while employment has recently expanded in most Utah counties, six out of the seven Coalition member counties still have not returned to pre-recession (2007) unemployment levels.⁵⁹ The Uinta Basin Railway could help alleviate this issue by creating jobs.⁶⁰ It is estimated that the Uinta Basin Railway will add the equivalent of approximately 3,100-5,500 job years during construction of the rail line and 50-100 permanent new railway jobs in Carbon, Duchesne, and Uintah Counties.⁶¹

Finally, the Uinta Basin Railway could also increase royalties and tax revenues, which are received by state, local and tribal sovereign governments.⁶² It is estimated that, between 2007 and 2016, the lack of adequate transportation infrastructure resulted in a discount paid for oil produced in the Uinta Basin compared to the standard of West Texas Intermediate oil, which discount resulted in hundreds of millions of dollars of lost taxes and royalties to state and local

⁵⁸ Utah Dept. of Workforce Services, Employment Update - Unemployment Rates (Mar. 23, 2020), available at <https://jobs.utah.gov/wi/update/une/>.

⁵⁹ See Mark Knold, *Utah: A Tale of Two Economies*, Utah Dept. of Workforce Servs. (July 20, 2018), <https://jobs.utah.gov/blog/post/2018/07/20/utah-a-tale-of-two-economies> (reporting data from the U.S. Bureau of Labor Statistics). Note that unemployment data reflected in this Petition is based on conditions existing before the ongoing COVID-19 pandemic. Absent construction of the Uinta Basin Railway, the Coalition anticipates that unemployment levels will return to these baseline conditions following the pandemic.

⁶⁰ UBETS 2013 Study at 113-14.

⁶¹ V.S. ¶ 24. This estimate of permanent railway jobs is for the Whitmore Park and Indian Canyon Alternatives. *Id.*

⁶² *Id.*

governments.⁶³ The development of the Uinta Basin Railway would give oil producers the opportunity to access new markets and expand production depending on adequate market conditions.⁶⁴ Such oil production expansion would generate greater royalties and tax revenue.⁶⁵

Recognizing the important public need that will be served by construction and operation of the Uinta Basin Railway, the Project has amassed considerable project support from State and local government officials. For example, Governor Gary Herbert has stated that “[t]he railway represents an important opportunity to improve Utah’s energy infrastructure and environmental stewardship, and to enhance the rural economies of Eastern Utah.”⁶⁶ And Utah State Senator J. Stuart Adams has recognized the Project’s “importan[ce] to Utah’s economy and Rural Utah’s ability to diversify their economic streams.”⁶⁷ Uintah, Duchesne, and Carbon

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Letter from Gary R. Herbert, Utah State Governor, to Ann D. Begeman, Chairman, Surface Transportation Board, dated October 10, 2019, available at [https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/602052A45B6C89A3852584B600742BFE/\\$File/EI-26745.pdf?OpenElement](https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/602052A45B6C89A3852584B600742BFE/$File/EI-26745.pdf?OpenElement).

⁶⁷ Letter from J. Stuart Adams, Senator, Utah State Senate, to Surface Transportation Board, dated July 29, 2019, available at [https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/4F374BB7952AE7B08525847F004D94DF/\\$File/EI-26703.pdf?OpenElement](https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/4F374BB7952AE7B08525847F004D94DF/$File/EI-26703.pdf?OpenElement).

Counties have also expressed support for the Project due to the potential economic opportunities of the rail line.⁶⁸

IV. Environmental Review

Representatives of the Coalition have consulted with OEA on the environmental review process. By letter dated February 1, 2019, OEA granted the Coalition's request for a waiver of the required six-month notice to OEA. On June 19, 2019, OEA issued a notice of intent to prepare an EIS, notice of availability of draft scope of study for the EIS, and a notice of meetings and opportunity for public comment (84 Fed. Reg. 28611). Public meetings were held each day from July 15, 2019 through July 19, 2019, at various locations in Utah, with two meetings held on July 18, 2019. A final scope of study was released on December 13, 2019, identifying the Whitmore Park Alternative as the preferred alternative.

The Coalition has been working with OEA and OEA's third-party contractor to conduct field work and gather environmental data to support preparation of the Draft EIS for the Project.⁶⁹

⁶⁸ Letter from Duchesne County Commission, to Kathryn Floyd, Venable LLP, dated May 28, 2020 (on file with the Coalition); Letter from Todd Thorne, Director of Planning and Public Lands, Carbon County, to Joshua Wayland, Surface Transportation Board, dated September 3, 2019, available at [https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/7F32F90C87A7158A8525847F00589874/\\$File/EI-26719.pdf?OpenElement](https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/7F32F90C87A7158A8525847F00589874/$File/EI-26719.pdf?OpenElement); Letter from Uintah County Commissioners to Joshua Wayland, Surface Transportation Board, dated May 8, 2019, available at [https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/EC95191AB0564B4B8525840400568222/\\$File/EI-26509.pdf?OpenElement](https://www.stb.gov/ect1/ecorrespondence.nsf/STBPublicIncomingByDocketNumber/EC95191AB0564B4B8525840400568222/$File/EI-26509.pdf?OpenElement).

⁶⁹ V.S. ¶ 22.

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.⁷⁰ 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.⁷¹

In short, “Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.”⁷²

⁷⁰ 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*, STB Finance Docket No. 34658, (STB served Jan. 6, 2010) (“*Alaska Railroad Construction*”) 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”).

⁷¹ *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).

⁷² *DesertXpress Enterprises, LLC—Construction & Operation Exemption—In Victorville, CA and Las Vegas, NV*, STB Finance Docket No. 35544, at 3 (STB served Oct. 25, 2011); 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

II. The Board should exempt the construction and operation of the Uinta Basin Railway 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.⁷³

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 provision was designed.⁷⁴ The Board has been charged with removing as many restrictions as possible and reducing regulation wherever possible.⁷⁵

Finance Docket No. 34060, at 7 (STB served Mar. 21, 2002) (noting that ICCTA “establishes a clear presumption in favor of rail construction proposals”).

⁷³ See, e.g., *DesertXpress* at 3; *Alaska Railroad Construction* at 5-6.

⁷⁴ 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).

⁷⁵ 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”).

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.

A. An exemption will promote the Rail Transportation Policy.

Regulation of the construction and operation of the Uinta Basin Railway 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, granting an exemption for the Uinta Basin Railway is consistent with the mandate of Sections 10101(4) and 10101(5) that the Board promote effective competition and coordinate among rail carriers and other modes of transportation by ensuring the development and continuation of a sound transportation system and fostering sound economic conditions. It is also consistent with the aim of Section 10101(1) to allow, to the maximum extent possible, competition and the demand for service to establish reasonable rates and service terms. Specifically, the proposed line will provide the Uinta Basin region with a connection to the national rail network (a freight transportation option that does not currently exist) offering access to two class I rail carriers and enhancing intermodal competition with trucking.

Second, consistent with Sections 10101(2) and 10101(7), an exemption will minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry. An exemption here will promote these

policies by minimizing the time and administrative expense associated with the construction and commencement of operations. Regulatory barriers to new capacity and infrastructure improvements in particular should be minimized where possible in order to promote and maintain stable economic growth.⁷⁶

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 and operation projects promote the Rail Transportation Policy by providing rail service options, allowing for competition, and encouraging the provision of more efficient transportation service.⁷⁸

⁷⁶ Cf. *Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Levan and Selina, UT*, STB Finance Docket No. 34075, at 3 (STB served Oct. 19, 2001) (finding that granting an exemption for the proposed construction and operation of a 43-mile rail line into an isolated area of Utah was appropriate because it would “provide an alternative rail service option to shippers in an isolated area of Utah and increase competition [49 U.S.C. 10101(1) and (4)]” and “reduce the need for Federal regulation, ensure the development of a sound transportation system with effective competition among carriers, foster sound economic conditions, and reduce regulatory barriers to entry [49 U.S.C. 10101(2), (4), (5), and (7)].”).

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); *CA High-Speed Rail Authority—Construction Exemption—In Merced, Madera, and Fresno Counties, CA*, STB Finance Docket No. 35724 at 22-23 (STB served June 13, 2013); *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*

The proposed Uinta Basin Railway is a straightforward transportation project, bringing rail service to an area of the country currently lacking access to safe, reliable, and efficient freight transportation options. Construction and operation of the line raise no concerns which might justify Board scrutiny under Section 10901.⁷⁹ An exemption from regulatory review (excepting environmental review and regulation) will promote a number of Rail Transportation Policy goals, including minimizing the need for federal regulatory control, ensuring the development and continuation of a sound rail transportation system with effective competition and coordination among differing modes of transportation, allowing competition and demand for service to establish transportation rates and service terms, and encouraging the efficient

Authority—Petition for Exemption—Construction of a Line of Railroad in Itasca County, MN, STB Finance Docket No. 34992, at 3 (STB served Sept. 8, 2008); *Southwest Gulf R.R. Co.—Construction and Operation Exemption—Medina County, TX*, STB Finance Docket No. 34284 (“*Southwest Gulf R.R. Co.*”), 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 (June 30, 1995).

⁷⁹ Because the market adequately determines the value of a potential rail construction project, there is no need for regulatory oversight under 49 U.S.C. § 10901 to determine if a project is economically sound. See *California High-Speed Rail Authority—Construction and Operation Exemption—In Fresno, Kings, Tulare, and Kern Counties, CA*, STB Finance Docket No. 35724-1 at 11 n.37 (served Aug. 12, 2014) (citing to *Mid-States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 552 (8th Cir. 2003)). This is especially true for a project like the Uinta Basin Railway, which is anticipated to be structured as a public-private partnership under which the private partner will be responsible for commercialization of the Project.

management of railroads. In contrast, none of the goals in the Rail Transportation Policy will be hindered by granting this Petition.

Formal and potentially protracted Board review and approval pursuant to Section 10901 is not necessary to carry out the goals of the Rail Transportation Policy. In fact, to require such approval by means other than exemption undermines the aims of the Rail Transportation Policy.

B. Regulation of the Uinta Basin Railway 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."⁸⁰ The proposed construction and operation of the Uinta Basin Railway clearly satisfies the latter test.

The Uinta Basin Railway is designed in principal part to enhance transportation service to shippers, and therefore regulation of its construction and operation is unnecessary to protect shippers from an abuse of market power.⁸¹

⁸⁰ 49 U.S.C. § 10502(a)(2).

⁸¹ See, e.g., *Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Levan and Selina, UT*, STB Finance Docket No. 34075, at 3 (STB served Oct. 19, 2001) (finding that regulation of the proposed construction and operation of a 43-mile rail line was not needed to protect shippers from an abuse of market power because the line would "provide the area with another transportation option and would enhance competition"); *Texas Railway Exchange—Construction and Operation Exemption—Galveston Cty., TX*, STB Finance Docket No. 36186, at 4-5 (STB served Jan. 17, 2020) (finding that the proposed rail line "would enhance competition by providing a new rail option");

Currently, the only transportation option available to freight shippers in the Uinta Basin is trucking along two-lane highways. The proposed line, when completed, will provide freight shippers in the Basin with rail service and with increased intermodal competition with commercial freight by truck. Further, all three routes under consideration would provide shippers with access to both UP and BNSF Railway Company lines. Thus, the Uinta Basin Railway will only serve to increase the competitive options available to shippers, eliminating shippers' reliance on one option for freight transportation.

In short, connection of the Uinta Basin to the national freight rail system will not result in, or enable, any abuse of market power.

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 an

Palmetto Railways—Construction and Operation Exemption—In Berkeley Cty., SC, STB Finance Docket No. 36095, at 3 (STB served July 22, 2019) (finding the proposed rail line “would enhance competition by providing rail service where it does not currently exist, and thereby create an alternative mode of transportation”); *Lone Star Railroad Inc. and Southern Switching Company—Track Construction and Operation Exemption—In Howard Cty., TX*, STB Finance Docket No. 35874, at 3-4 (STB served Mar. 3, 2016) (finding that construction of new rail line would “enhance competition by providing rail service where it does not currently exist”); *Ameren Energy Generating Company—Construction and Operation Exemption—In Coffeen and Walshville, IL*, STB Finance Docket No. 34435, at 4 (STB served Feb. 17, 2006) (finding that exemption was appropriate where proposed construction would “increase the rail transportation options available to [shippers]”); *Illinois Central Railroad Company—Construction and Operation Exemption—in East Baton Rouge Parish, LA*, STB Finance Docket No. 33877, at 5 (STB served Oct. 25, 2001) (finding an exemption to be appropriate where the proposed rail line would enhance a shippers transportation options and eliminate its existing dependence on one carrier).

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

C. The Board should conditionally grant the requested exemption, subject to the completion of the Board’s environmental review process.

The Coalition requests that the Board conditionally approve its Petition for Exemption subject to completion of the environmental review process under the National Environmental Policy Act. In the past, the Board “consistently handled rail construction applications or exemption requests by first considering the transportation issues and later addressing the environmental issues.”⁸² While the Board has more recently adopted a practice of conditionally approving proposed rail projects only when there are “unique and compelling circumstances,” the Coalition believes that requirement is satisfied here.

The ongoing COVID-19 pandemic and its economic impacts clearly create unique and compelling circumstances that justify conditional approval. The Chairman of the Federal Reserve has described the economic effects of the pandemic as “without modern precedent” and “worse than any recession since World War II.”⁸³ Unemployment levels have increased, businesses have been forced to close, and state

⁸² *Illinois Central Railroad Co.—Construction and Operation Exemption—In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877 at 5 (STB served Oct. 25, 2001).

⁸³ See Jerome H. Powell, Chair, Federal Reserve Bank, Testimony Before the Senate Committee on Banking, Housing, and Urban Affairs: Coronavirus and the CARES Act (May 19, 2020), available at <https://www.federalreserve.gov/newsevents/testimony/powell20200519a.htm>.

and local taxes revenues have declined substantially. Though the majority of these impacts should not persist in the long-term, minimizing the impacts by completing federal review and approval processes as efficiently as possible for projects that have the potential to provide substantial economic stimulation is important to state and local economies. Conditional approval is also consistent with the recently issued “Executive Order on Regulatory Relief to Support Economic Recovery,” which specifically directs agencies to “identify regulatory standards that may inhibit economic recovery and [] consider taking appropriate action . . . to temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements . . . for the purpose of promoting job creation and economic growth”⁸⁴

The ongoing environmental review process should not interfere with consideration of the transportation merits on a conditional basis. First, the information that will be developed during the environmental review process is neither necessary nor relevant for purposes of analyzing the transportation merits of the project.⁸⁵ Second, granting conditional approval will in no way limit or alter the

⁸⁴ Executive Order on Regulatory Relief to Support Relief to Support Economic Recovery (“Order”), WhiteHouse.gov (May 19, 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/> (explaining that it is critical for federal agencies to address the current economic emergency “by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery . . .”).

⁸⁵ See, e.g., *Great Lakes Basin Transportation, Inc.—Rail Construction and Operation—In Rock County. Wisc., Winnebago, Ogle, Lee, Lasalle, Grundy, and*

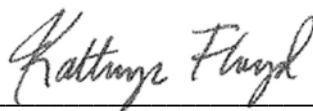
Board's authority to consider environmental matters, as these matters will be thoroughly considered and addressed when the Board issues its final decision on the Project.⁸⁶

Accordingly, the Coalition respectfully requests the Board to issue an order conditionally granting this Petition, subject to the issuance of a final Board decision after all environmental reviews have been completed.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board grant this Petition and issue a decision exempting the construction and operation of the Uinta Basin Railway from the prior approval requirements of 49 U.S.C. § 10901.

Respectfully submitted,



Kathryn Kusske Floyd

Kankakee Counties, Ill., and Lake and Porter Counties, Ind., STB Finance Docket No. 35952 at 1 n.2 (STB served June 2, 2017) (noting that the environmental review process is separate from the Board's transportation merits analysis).

⁸⁶ See, e.g., *Great Salt Lake and Southern Railroad, LLC—Construction and Operation—in Tooele County, Utah*, STB Finance Docket No. 33824 at 5 (STB served Dec. 15, 2000) (“[W]e have consistently handled construction applications and exemptions by first considering the transportation issues, and later addressing environmental issues.”); *Ellis County Rural Rail Transportation District—Construction and Operation Exemption—Ellis, County, Texas*, STB Finance Docket No. 33731 at 3 (STB served Feb. 15, 2000) (“Granting the requested conditional exemption will not diminish our capacity to consider environmental matters when we issue a final decision addressing the environmental issues and making the exemption effective at that time, if appropriate.”).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May 2020, 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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

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

PETITION FOR EXEMPTION

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

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

**VERIFIED STATEMENT OF MICHAEL J. MCKEE
IN SUPPORT OF PETITION FOR EXEMPTION**

1. My name is Michael J. McKee. I am the Executive Director of Seven County Infrastructure Coalition (the “Coalition”). My office is located at 10849 N. 7750 E., Tridell, Utah 84076.

2. As Executive Director of the Coalition, I have been actively involved in and am familiar with the Coalition’s planned construction and operation of an approximately 85-mile rail line connecting two termini in the Uinta Basin near South Myton Bench, Utah, and Leland Bench, Utah, to the national rail network at Kyune, Utah (the “Uinta Basin Railway” or the “Project”).

3. Prior to my position as Executive Director of the Coalition, I served on the Uintah County Board of County Commissioners from January 2003 to March 2017. As a County Commissioner, I served as commissioner over public lands and worked with local, state, and Federal Agencies on issues related to energy, water, and natural resources, as well as the Bureau of Land Management Resource Management Plan. In this role, I became familiar with the industries and economic drivers in the Uinta Basin region. In particular, I am familiar with the oil production industry in

the region and how the historic volatility of the oil market has impacted the viability of the communities and welfare of citizens in the Uinta Basin.

4. I am submitting this Verified Statement in support of the Petition for Exemption filed by the Coalition 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 Uinta Basin Railway. This Verified Statement is based on firsthand knowledge from my involvement, as the Executive Director of the Coalition, in the planning of the Project.

Background to the Project

5. The Coalition is an independent political subdivision of the State of Utah whose member counties include Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties. The Coalition was formed to, among other things, identify and develop infrastructure projects that will promote resource utilization and development, balancing environmental values and natural features, for the overall general welfare of the Coalition's seven member counties, including the planning, construction, and maintenance of public facilities.

6. The Uinta Basin is a geographical area approximately 12,000 square miles in size, lying in northeastern Utah and extending into northwestern Colorado. The Basin—sometimes referred to as the “Isolated Empire” due to its geographic isolation within the mountain ranges and plateaus of the surrounding Rocky Mountain West—is partially located within the boundaries of the Coalition's seven member counties.

7. The Uinta Basin contains extensive deposits of valuable minerals, including large deposits of phosphate. Also found within the region are substantial deposits of crude oil, natural gas, oil shale, oil sands, gilsonite, natural asphalt, aggregate materials, and low-sulfur coal. Agriculture is also an important part of the Uinta Basin's economy and includes cattle, alfalfa, corn, and other field crops.

8. Farming, ranching, oil and gas production, and mineral extraction, depend heavily on the transportation of goods and commodities in and out of the region. Farmers and ranchers, for example, ship alfalfa, hay, grain, and livestock to areas across the country. Oil and gas producers bring in fracking sand, tubular steel products, and other production inputs.

9. Currently, trucking is the only mode of freight transportation in and out of the Basin. This is primarily due to the geography of the Basin, which is bounded by high mountains or plateaus. There is no viable shipping watercourse in the Uinta Basin, and the area's rugged, mountainous terrain historically has discouraged robust infrastructure development. In the 19th and 20th centuries, transcontinental railway lines purposely were constructed *around* the Basin to avoid the high construction and operating costs needed to transverse the mountains and plateaus circling the region.

10. Despite the Uinta Basin's reliance on trucking for freight transportation, there are no freeways in and out of the Basin. This means that, at present, all goods produced or consumed in the Basin must be transported by trucks on two-lane highways that cross high mountain passes, including Daniels Summit at

8,020 feet when traveling to Salt Lake City, Utah, Douglas Pass at 8,268 feet when traveling to Grand Junction, Colorado, and Indian Canyon Pass at 9,100 feet when traveling to Price, Utah. Disruptions due to snow and ice occur during the winter months, and the mixture of heavy truck traffic and passenger cars on these roads poses safety concerns, especially during inclement conditions.

11. In addition, trucks are not a cost-effective transportation option for heavy and bulk commodity movements and generally are used only for short-haul movements of these commodities. The lack of alternative transportation options thus hinders the local industries' access to the national marketplace.

12. Oil producers, in particular, have been disadvantaged by existing transportation constraints. Trucking oil to distant markets is not only expensive but cost prohibitive for most Uinta Basin producers. Currently, the only nearby market that Uinta Basin oil producers can economically access by truck is the Salt Lake City market. But Salt Lake refiners are already receiving the maximum amount of Uinta Basin crude oil that they can handle—around 80-90,000 barrels of oil per day (bopd)—and have no known plans to expand their refining capacity.¹ Thus, the lack of rail access has effectively capped oil production in the Basin.

13. To address the Basin's surface transportation gap, the Coalition is proposing the construction and operation the Uinta Basin Railway. The Uinta Basin

¹ This Petition discusses the amounts of oil being delivered to Salt Lake City refiners prior to the COVID-19 pandemic. It is anticipated that the market impacts of the pandemic will be temporary and that, following the pandemic, market conditions will return to these baseline levels.

Railway would connect the Uinta Basin in northeastern Utah to the interstate common-carrier rail network using a route that would provide shippers in the Basin with a viable rail alternative to trucking. By providing an economic alternative to trucking, the proposed Project would allow Uinta Basin producers to access new markets, thereby enhancing the quality of life for the residents of the Uinta Basin and its communities.

The Proposed Uinta Basin Railway

14. The Coalition has retained consultants to provide environmental consulting, engineering, and other related services to support the Coalition's development of the Uinta Basin Railway, including the environmental review and permitting processes. The Coalition's consultants have, among other things, developed preliminary engineering and design for the proposed rail line and projections related to estimated train traffic on the line.

15. As shown in Exhibit B to the Petition for Exemption, the proposed rail line would span a linear distance of approximately 80-103 miles, depending on the route approved, and would consist of a single track constructed of continuous-welded rail. The majority of the right-of-way for the Project would be approximately 100 feet wide. However, in certain areas where greater cut-and-fill work is needed to traverse rugged topography, the right-of-way will be wider. In addition to construction of the rail line and associated earthwork, the Project will also involve construction of access roads, tunnels, communications towers, road crossings, culverts, and stream crossings.

16. The Coalition's preferred alternative, the Whitmore Park Route, would begin at two termini near South Myton and Leland Bench, Utah and would intersect Indian Canyon approximately two miles south of Duchesne, Utah. It would then travel southwest along Indian Creek parallel to U.S. Highway 191 and ultimately connect to an existing line owned by Union Pacific near Kyune, Utah. BNSF also has trackage rights to the Union Pacific line. The Whitmore Park Route would span total linear distance of 87.7 miles and would cross private lands, lands managed by state and federal agencies, and trust lands of the Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Tribe").

17. The Uinta Basin Railway will primarily be used to ship crude oil and fracking sand. Shipments are also expected to include agricultural products, pipe, oilfield tubular steel products, building products, industrial materials, and other bulk commodities. The Coalition's consultants anticipate that fracking sand and crude oil will be shipped in unit trains, while other goods would be shipped in manifest carloads added to crude oil or fracking sand unit trains. The Coalition's consultants do not expect that separate manifest trains will be operated on the Uinta Basin Railway.

18. The frequency of traffic on the Uinta Basin Railway is expected to vary depending upon a number of factors including, but not limited to, general domestic and global economic conditions, commodity pricing, and the strategic and capital investment decisions of oil producers and their customers. It is anticipated that much

of the outbound traffic on the Uinta Basin Railway will be shipped to refineries along the Gulf Coast.²

19. The Coalition currently anticipates that construction of the Uinta Basin Railway will begin in 2021. Once begun, the Coalition’s consultants estimate that construction will last between twenty and twenty-eight months for either the Whitmore Park Alternative or the Indian Canyon Alternative, depending on weather conditions. If the Wells Draw Alternative is selected, the Coalition’s consultants estimate that construction would take thirty-two to forty-eight months, depending upon weather conditions. The total cost of construction for the Coalition’s preferred alternative is expected to range from approximately \$1.2 to \$1.5 billion.

20. The Coalition does not intend to operate the Uinta Basin Railway itself. Rather, it intends to enter into a contract with an existing, experienced railroad to provide common carrier rail service. The Coalition has entered into a preliminary Memorandum of Understanding (“MOU”) with Drexel Hamilton Infrastructure Partners (“Drexel Hamilton”) and Rio Grande Pacific Corporation (“Rio Grande”). In an amendment to the MOU, which will be finalized shortly, the Ute Tribe has agreed to join the MOU as a party. The MOU outlines the respective preliminary roles of the parties in development of the Project. The MOU requires an additional long-term

² The Coalition provided reasonably foreseeable traffic projections to the Office of Environmental Analysis as part of the environmental review process. The traffic projections were based on conditions existing before the ongoing COVID-19 pandemic. The Coalition anticipates that any impacts caused by the unprecedented pandemic will be temporary in nature and that, following the pandemic, these previous historical conditions will return absent construction of the Uinta Basin Railway.

agreement that will establish the full public private partnership between the parties. It currently is anticipated that, subject to further agreement, Drexel Hamilton will be responsible for financing and commercialization of the Project, and Rio Grande will be responsible for operations and maintenance of the Uinta Basin Railway. The Coalition anticipates that it will remain responsible for project planning, completion of the environmental review and permitting processes, and obtaining authority to construct the Railway. The Coalition also anticipates that the Ute Tribe will become an equity partner in the Project.

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

22. The Coalition has received funding from the Utah Permanent Community Impact Fund Board (“CIB”) for planning and studies needed for the environmental review and permitting processes for the Project. The Coalition has been working with OEA and OEA’s third-party contractor to conduct field work and gather environmental data to support preparation of the Draft EIS for the Project

Impact of the Uinta Basin Railway

23. The Uinta Basin Railway will directly connect the Uinta Basin to the national rail network. This connection would give shippers an additional option for freight transportation in and out of the Uinta Basin, eliminating longstanding transportation constraints. By providing a safe, reliable, and efficient mode of

transportation and increasing competition between differing transportation modes, the Uinta Basin Railway will provide local industries the opportunity to access new markets and increase their competitiveness in the national marketplace. While many factors beyond access to rail would determine the level of oil production in the Basin, access to the interstate network would enable local producers to increase their output under appropriate market conditions. The removal of transportation constraints will also benefit mining companies, ranchers, farmers, and other local industries.

24. Development of the Uinta Basin Railway also is expected to create local jobs and reduce unemployment in the Basin. The Coalition's consultants estimate that the Uinta Basin Railway will add the equivalent of approximately 3,100-5,500 job years during construction of the rail line and 50-100 permanent new railway jobs in Carbon, Duchesne, and Uintah Counties. This estimate of permanent railway jobs is for the Whitmore Park and Indian Canyon Alternatives.

25. The Uinta Basin Railway also could increase royalties and tax revenues. Royalties and tax revenues are received by state, local and tribal sovereign governments. The Coalition's consultants estimate that, between 2007 and 2016, the lack of adequate transportation infrastructure in the Basin resulted in a discount paid for oil produced in the Uinta Basin compared to the standard of West Texas Intermediate oil, which discount resulted in hundreds of millions of dollars of lost taxes and royalties to state and local governments. The development of the Uinta Basin Railway would give oil producers the opportunity to access new markets and

expand production depending on adequate market conditions. Such oil production expansion would generate greater royalties and tax revenue.

Conclusion

26. The Uinta Basin Railway will provide a connection to the interstate rail network, giving shippers within the region an alternative to trucking. This rail option will provide these industries with the ability to access new markets and expand production, increasing the economic opportunities within the Basin and enhancing the quality of life for residents of the Uinta Basin and its communities.

VERIFICATION

I, Michael J. McKee, 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 29th day of May, 2020.

Michael J. McKee
Michael J. McKee

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

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

PETITION FOR EXEMPTION

EXHIBIT B

