December 21, 2020

Serge Stanich
Director of Environmental Services
California High-Speed Rail Authority
770 L Street, Suite 620, MS-2
Sacramento, California 95814
Submitted via email: serge.stanich@hsr.ca.gov

Dear Serge Stanich:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Revised Notice of Preparation (Revised NOP) for the California High-Speed Rail Project: Los Angeles to Anaheim Section (Project) Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS), State Clearinghouse No. 2007031067. The Project will connect Los Angeles and Orange counties resulting in approximately 30 miles of track. According to the Revised NOP, the Project will require the expansion of the mainline alignment from Los Angeles Union Station to the Anaheim Regional Transportation Intermodal Center from three to four tracks. Since two of the tracks along the proposed four-track alignment will be used primarily by commuter trains, the Project estimates the corridor will no longer have the capacity to accommodate 10 of the total existing daily freight diesel-powered line-haul locomotive trips that currently use the existing three-track mainline alignment. To accommodate the 10 daily freight diesel-powered line-haul locomotive trips, the Project proposes constructing a new intermodal rail facility in Colton and staging tracks in the unincorporated area of Lenwood in San Bernardino County. The California High-Speed Rail Authority (Authority) is the lead agency for California Environmental Quality Act (CEQA) purposes.

Freight facilities, such as those proposed in Colton and Lenwood by the Project, can result in high daily volumes of heavy-duty diesel truck and train traffic, and operation of on-site equipment (e.g., forklifts and yard tractors, etc.) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change.[1] CARB has reviewed the Revised NOP and is concerned about the potential air pollution and health risk impacts that could result from the project as proposed. As such, we included several recommendations, if implemented, support a state-of-the-art

[1] With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

zero-emission intermodal rail facility that could be a model for future rail facilities in the State and beyond.

I. The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities

The Project, as proposed, has the potential to increase freight train and truck traffic along existing rail lines and roadways as a result of the proposed intermodal rail facility. If so, this increase in traffic will expose nearby disadvantaged communities to further elevated levels of air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered and included in the Draft EIR/EIS when developing a project like this in disadvantaged communities:

a. Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)[2] recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).[3] The census tracts containing portions of the proposed mainline alignment from Los Angeles Union Station to the Anaheim Regional Transportation Intermodal Center and the proposed intermodal rail facility score well within the top 25 percent for Pollution Burden,[4] and are considered disadvantaged communities; therefore, CARB urges the Authority to ensure that the Project does not further adversely impact neighboring disadvantaged communities.

---

2. Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721and § 39723.

3. "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.

4. Pollution Burden represents the potential exposures to pollutants and the adverse environmental conditions caused by pollution.

b. Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)[5] amended California's Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities.

c. Assembly Bill 617 (Garcia, 2017)

The state of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).[6] AB 617 requires new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution.

Additionally, Governor Gavin Newsom signed Executive Order N-79-20 on September 23, 2020. The executive order states: "It shall be a goal of the State that 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035. It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. It shall be further a goal of the State to transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible." The executive order further directs the development of regulations to help meet these goals. To comply with the executive order and to protect public health, CARB urges the Authority to require all trucks, locomotives, and off-road vehicles and equipment operating on or servicing the proposed intermodal rail facility to transition to zero-emission by 2035.

---

5. Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

6. Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

The Project could increase air pollutant emissions within the East Los Angeles/Boyle Heights/West Commerce Community and San Bernardino/Muscoy Community. These communities are 2 of 13 communities statewide chosen by CARB thus far for inclusion in the Community Air Protection Program.[7] These two communities were selected for both community air monitoring and the development of an emissions reduction program due to their high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by the residents. Portions of the proposed mainline alignment from Los Angeles Union Station to the Anaheim Regional Transportation Intermodal Center will be constructed within the boundary of the East Los Angeles/Boyle Heights/West Commerce Community. Additionally, the proposed intermodal rail facility is located within two miles of the San Bernardino/Muscoy Community boundary. Although it is CARB's understanding that the Project is not anticipated to increase freight rail traffic within the San Bernardino/Muscoy Community, the operation of the proposed intermodal rail facility could result in an increase in air pollutant emissions within the community boundary as a result of an increase in truck traffic and off-road equipment and vehicles at the rail facility.

The CalEnviroScreen score for both the East Los Angeles/Boyle Heights/West Commerce Community and San Bernardino/Muscoy Community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in both of these communities routinely exceed State and federal air quality standards. Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel particulate matter (diesel PM) generated during the construction and operation of the Project may further negatively impact nearby disadvantaged communities, which are already disproportionately impacted by air pollution from existing rail and other freight operations, as well as stationary sources of air pollution. Therefore, the Authority has an opportunity to design the proposed intermodal facility to be zero emission and reduce the pollution burden on neighboring disadvantaged communities.

AB 617 required CARB and the South Coast Air Quality Management District (SCAQMD) to create a highly-resolved inventory of air pollution sources within the East Los Angeles/Boyle Heights/West Commerce Community and San Bernardino/Muscoy Community. CARB can share these community emissions inventories with the Authority to aid in the Draft EIR/EIS's cumulative impact analysis.

[7] CARB, Community Air Protection Program Selection Process: https://ww2.arb.ca.gov/capp-selection.

II. In the Draft EIR/EIS' Alternatives Analysis, the Authority, and BNSF Must Provide Substantial Evidence Supporting their Selection of the CalPortland Cement Site for the Proposed Intermodal Facility

The Revised NOP claims a new intermodal rail facility will need to be constructed at the CalPortland Cement site in the Colton area to accommodate the 10 daily freight diesel-powered line-haul locomotive trips displaced by the Project. Although it is clear in the Revised NOP that some of the existing freight rail traffic will need to be diverted to an alternate intermodal rail facility, the Revised NOP does not provide any evidence to support the selection of the CalPortland Cement site to service the 10 daily freight diesel-powered line-haul locomotive trips.

The proposed intermodal rail facility in the Colton area, and its associated rail improvements, will be adjacent to existing residences that are already exposed to toxic diesel PM emissions from freight operations at existing industrial buildings and rail facilities in the San Bernardino County area. As discussed in Section I of this letter, the existing residences adjacent to the proposed intermodal rail facility are already exposed to toxic diesel PM emissions from vehicle and rail traffic along existing roadways and rail lines. Since the proposed intermodal rail facility is located near existing residences that are disproportionately burdened by multiple sources of air pollution, including existing nearby railyards, CARB urges the Authority to evaluate alternative locations for the proposed intermodal rail facility in the Draft EIR/EIS. The criteria used to evaluate these alternatives should include the air quality impacts of the rail facility's proximity to existing and future proposed residences as well as other sensitive receptors (e.g., schools, nursing homes, daycare centers, and recreation facilities). The alternative should also identify mechanisms to deploy cleaner locomotives and explore non-combustion technology options such that emissions are not increased within nearby communities.

III. The Draft EIR/EIS Should Include a Mitigation Measure that Ensures the Project Uses the Cleanest Switcher and Line-Haul Locomotives Available

CARB urges the Authority and BNSF to use the cleanest available switcher and line-haul locomotive fleets within the Project area, including the proposed intermodal rail facility in Colton, existing intermodal facilities in Hobart and Commerce, and the Los Angeles to Anaheim and Fullerton to Colton and Colton to Lenwood corridors.

Consistent with Executive Order N-79-20, and to address the Project's impact on air quality and public health, CARB encourages the Authority and BNSF to introduce new switcher and line-haul locomotives that can operate in zero-emission mode. The phasing in of switcher and line-haul locomotives capable of operating in zero-emission mode will reduce the Project's air pollution emissions. However, to protect public health, it should be BNSF's ultimate goal to require all switcher and line-haul

locomotives servicing the proposed intermodal facility to be zero emission while operating within the SCAQMD.

CARB has sponsored, and continues to sponsor, demonstration projects to accelerate the adoption of clean freight technologies and reduce air pollution caused by the movement of goods throughout the State. As part of CARB's Zero and Near Zero-Emission Freight Facilities Program, there are demonstration projects on the use of battery-electric switcher and line-haul locomotives that could be applied to the Project.[8] Although there are currently no demonstration projects on the use of zero-emission switcher locomotives sponsored by the Zero and Near Zero-Emission Freight Facilities Program, the battery-electric technology developed for line-haul locomotives could be applied to switchers in future demonstration projects. Based on research already done by CARB and the aggressive goals set by Executive Order N-79-20, it is reasonable to expect that zero-emission switcher and line-haul locomotives could be available to the Authority and BNSF by 2035.

To protect the health of people living in disadvantaged communities located near the proposed intermodal rail facility in Colton and existing intermodal facilities in Hobart and Commerce, CARB urges the Authority and BNSF to include in the Draft EIR/EIS a mitigation measure to reduce the Project's air pollutant emissions from the switcher and line-haul locomotives. The measure should require all switcher and line-haul locomotives operating at the proposed intermodal rail facility to be zero emission. The measure should require BNSF to prepare a technical feasibility report that evaluates the feasibility of expeditiously phasing in the latest zero-emission switcher and line-haul locomotives to their fleet servicing the proposed intermodal rail facility. The technical feasibility report should be prepared five years after the start of operations and in increments of five years thereafter. CARB and SCAQMD should review the technical feasibility report for accuracy. If the technical feasibility report finds that zero-emission switcher and line-haul locomotives can be integrated into BNSF's fleet, the Authority should require BNSF to begin transitioning their existing fleet servicing the proposed intermodal rail facility to exclusively zero-emission locomotives. The transition should begin with the replacement of 50 percent of BNSF's existing fleet servicing the proposed intermodal rail facility within five years, and increasing the percentage by 10 percent every year after until the fleet is fully zero emission.

---

8. California Air Resources Board (CARB), 2020. CARB's Zero and Near Zero Emission Freight Facility Program. Accessible at https://ww2.arb.ca.gov/news/carb-announces-more-200-million-new-funding-clean-freight-transportation#:~:text=The%20goal%20of%20CARB's%20Zero,commercialization%20of%20these%20technologies%20statewide.

IV. The Draft EIR/EIS Should Include an Alternative Where Zero-Emission Trucks are Used to Transport Cargo Rather than Line-Haul Locomotives

CARB recommends the Authority include an alternative in the Draft EIR/EIS that requires BNSF to exclusively use zero-emission light, medium, and heavy-duty trucks to replace the 10 daily diesel-powered line-haul locomotive trips displaced by the Project until the line-haul locomotives can operate in zero-emission mode for the entirety of their operation in the State.

CARB recently released a draft Truck vs. Train Emissions Analysis that demonstrates that as California's current truck regulations are implemented through 2023, trucks will produce fewer particulate matter (less than 2.5 micrometers) ($PM_{2.5}$) and oxides of nitrogen (NO_x) emissions.[9] By 2023, trucks will be the cleaner mode to transport freight. Beyond 2023, future CARB regulations will further reduce truck air pollutant emissions, eventually bringing them to zero. Unless locomotive technology is advanced beyond Tier 4, and there is an established pathway to transition away from combustion engines, transporting freight by trucks is expected to be the cleaner mode of transport in the near future. Based on this research, CARB urges the Authority and BNSF to include an alternative in the Draft EIR/EIS that analyzes the air pollutant emission benefits of exclusively using zero-emission light, medium, and heavy-duty trucks to transport freight until line-haul locomotives servicing the facility can operate in zero-emission mode for the entirety of their operation in the State.

The list below details the CARB regulations that will result in the reduction of diesel PM and NO_x emissions from trucks within the State:

- **Drayage Truck Regulation:** The existing Drayage Truck Regulation requires all drayage trucks to operate with an engine that is a 2007 model year or newer and the Truck and Bus Regulation requires all trucks, including drayage, to have 2010 or newer model year engines by January 1, 2023. In 2021, CARB expects to consider an Advanced Clean Fleet Regulation that includes requirements for all drayage trucks to transition to zero-emission technologies by 2035.

- **Heavy-Duty Low-NO_x Omnibus Rule:** On August 27, 2020, CARB approved the Heavy-Duty Low-NO_x Omnibus Rule that will require truck emission standards to be reduced from 0.20 to 0.05 grams per brake horsepower-hour (g/bhp-hr) from 2024 to 2026, and to 0.02 g/bhp-hr in 2027.

- **Truck and Bus Regulation:** The Truck and Bus Regulation requires trucks to have 2010 or newer model year engines by January 1, 2023.

[9] CARB, 2020. Draft Truck vs. Train Emissions Analysis. September 23, 2020. Accessible at https://ww2.arb.ca.gov/resources/fact-sheets/draft-truck-vs-train-emissions-analysis.

- **Advanced Clean Trucks Regulation:** On June 25, 2020, CARB approved the Advanced Clean Trucks Regulation. The regulation requires manufacturers to start the transition from diesel trucks and vans to zero-emission trucks beginning in 2024. The rule is expected to result in about 100,000 electric trucks in California by the end of 2030 and about 300,000 by 2035. CARB is expected to consider a fleet regulation in 2021 that would be compatible with the Advanced Clean Trucks regulation, requiring fleets to purchase a certain percentage of zero-emission trucks and vans for their fleet operations.

V. The Draft EIR/EIS Should Quantify and Discuss the Potential Cancer Risks at Residential and Other Sensitive Receptors in the vicinity of the Proposed Rail Facilities Located in Colton and Lenwood

CARB urges the Authority to prepare a health risk assessment (HRA) that shows the potential health risk impacts that will result from the construction and operation of the proposed rail facilities located in Colton and Lenwood. In addition to the health risks associated with operations, construction health risks should be included in the air quality section of the Draft EIR/EIS and the Project's HRA. Construction of the Project would result in short-term diesel emissions from the use of both on-road and off-road diesel equipment. The Office of Environmental Health Hazard Assessment's (OEHHA) guidance recommends assessing cancer risks for construction projects lasting longer than two months. Since construction would very likely occur over a period lasting longer than two months, the HRA prepared for the Project should include health risks for existing residences near the Project site during construction.

The HRA prepared in support of the Project should be based on the latest OEHHA guidance,[10] and the SCAQMD's CEQA Air Quality Handbook.[11] The HRA should evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project. The health risks modeled under both the existing and the future baselines should reflect all applicable federal, State, and local rules and regulations. By evaluating health risks using both baselines, the public and government planners will have a complete understanding of the potential health impacts that would result from the Project.

[10.] Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February 2015. Accessed at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf.

[11.] SCAQMD's 1993 Handbook can be found at: http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook.

VI. The Project's Mobile Air Pollutant Emissions Should be Modeled Using CARB's Latest Emission Factor Model

The Project's air quality and health risk impacts should be modeled using the latest mobile emission factors obtained from CARB's Emission Factors model (EMFAC), which is currently EMFAC2017. One of the many updates made to EMFAC2017 included an update to the model's heavy-duty emission rates and idling emission factors, which results in higher PM emissions as compared to EMFAC2014. Furthermore, CARB anticipates the official release of EMFAC2020 in late 2020 or early 2021. If EMFAC2020 is released prior to the publication of the Draft EIS/EIR, CARB urges the Authority to use EMFAC2020 to evaluate the Project's air quality and health risk impacts in the Draft EIS/EIR.

VII. The Authority and BNSF Must Implement All Feasible Mitigation Measures to Reduce the Project's Potentially Cumulatively Considerable Impact on Air Quality and Public Health

CEQA requires lead agencies to consider whether the incremental effects of a proposed project are cumulatively considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (See Title 14, Cal. Code of Regs., § 15064, subd. (h)(1)). The proposed intermodal rail facility will be located at the CalPortland Cement Site in the Colton area, located adjacent to Union Pacific's rail yard and within two miles from BNSF's rail yard. These two existing rail facilities already generate high-train and truck traffic along rail lines and roadways in San Bernardino County, resulting in elevated diesel PM and NO_x emissions. The proposed intermodal rail facility will introduce at least an additional 10 daily diesel-powered line-haul locomotive trips along with associated equipment on site, on top of the already high freight traffic in San Bernardino County from existing rail facilities. Therefore, CARB is concerned that the air pollutant emissions generated during the proposed intermodal rail facility's operation could expose residences to air pollutant emissions that would result in a cumulatively considerable impact on public health.

In addition to the consideration of general freight projects in the cumulative impacts analysis, the Draft EIR/EIS should consider the combined air quality and health risk impacts of the proposed intermodal rail facility, existing rail facilities, and other probable future rail facility projects in San Bernardino County. The proposed intermodal rail facility has the potential to expose existing or future residences or other sensitive receptors (e.g., schools, nursing homes, daycare centers, and recreation facilities) to air pollutant emissions that will result in additional significant cumulative impacts on public health. Should this occur, CEQA requires that the Authority implement all feasible mitigation measures to reduce the Project's impact on air quality and public health to a less than significant level. To meet the requirements

of CEQA, CARB strongly urges the Authority and BNSF to implement the following emission reduction measures:

- Require all off-road diesel-powered equipment used during the construction and operation of the Project to be equipped with Tier 4 or cleaner engines, except for specialized equipment for which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits such that emission reductions equal or exceed that of a Tier 4 engine.

- Require all on-site equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks, etc.) used within the proposed intermodal rail facility site to be zero-emission. With the goals set in Executive Order N-79-20 and the current availability of zero-emission off-road equipment, CARB believes the on-site equipment supporting the operation of the proposed intermodal facility can be completely zero-emission at the start of operation.

- Require all heavy-duty trucks entering or on the Project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2035. With the goals set in Executive Order N-79-20 and the advancement of zero-emission trucks, CARB believes fleets serving the proposed intermodal facility can achieve a 100 percent zero-emission heavy-duty truck fleet by 2035.

- Provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.

- Require all rail cars with transport refrigeration units (TRU) entering the intermodal rail facility to be plugged-in to electric power until they are ready to be transported directly out of the facility.

- Require all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with TRU or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fuel internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.

- Require all switcher and line-haul locomotives operating at the proposed intermodal rail facility to be capable of operating in zero-emission mode in the short-term, with the ultimate goal of transitioning to completely zero-emission line-haul and switcher locomotives no later than 2035.

VIII. The California High-Speed Rail Authority Can Implement the Above Suggestions Without Conflicting with the Interstate Commerce Commission Termination Act

The Interstate Commerce Commission Termination Act (ICCTA) does not bar the implementation of the recommended mitigation measures under Section III, Section IV, and Section VII of this letter as the ICCTA does not prevent California's self-governance. The California Supreme Court held, on very similar facts, that a state authority engaged in a state-operated rail project may choose to comply with CEQA without incurring ICCTA preemption. Such an action constitutes permissible self-governance by the state of California:

> ICCTA preempts solely "regulation" of rail transportation. (49 U.S.C. § 10501(b).) We now consider whether a state engages in regulation within the meaning of the ICCTA's preemption language as applied to state law directing a subdivision of the state to develop the state's *own* freight rail transportation project according to certain environmental guidelines.
> . . .
> [A]pplication of CEQA in this context constitutes self-governance on the part of a sovereign state and at the same time on the part of an owner. It appears to us extremely unlikely that Congress, in enacting the ICCTA, intended to preempt a state's adoption and use of the tools of self-governance in this situation, or to leave the state, as owner, without any means of establishing the basic principles under which it will undertake significant capital expenditures.

(*Friends of the Eel River v. N. Coast R.R. Auth.* (2017) 3 Cal. 5th 677, 723.)
In this Project, the Authority's proposal will create additional state-operated, in-state passenger service unrelated to the railroad commerce activities targeted by ICCTA. Interstate railroad operations could continue without the Project, as they have.

IX. The Interstate Commerce Commission Termination Act Does Not Bar the Recommendations of this Letter because the California High-Speed Rail Authority is Acting as a Market Participant

Although a State agency, the Authority is acting here as a private party in the rail market, commonly known as a "market participant", so long as the Authority does not resort to enforcement mechanisms not available to private parties. (*Friends of the Eel River*, 3 Cal. 5th at 739.) When the Authority follows the CEQA process and decides to implement environmental measures as part of the Project, it is making a rational business decision as a market participant and is deciding how it will govern itself, as long as those decisions do not conflict with federal law. "To the extent a private corporate parent would have a zone of freedom under the ICCTA to govern how its

subsidiaries will engage in the railroad business—including the freedom to direct them to undertake environmental fact finding as a condition of approving or going forward with their projects—the state presumably has the same sphere of freedom of action." (*Friends of the Eel River v. N Coast Railroad Auth.* (2017) 3 Cal. 5th 677, 737.) As a market participant, the Authority has the power to formulate contracts and other binding agreements to ensure that its environmental goals are met. This would include, but is by no means limited to, ensuring that BNSF implements the recommendations in this letter and uses the cleanest available technology within its respective Project area.

In addition, even under the existing federal rail preemption paradigm, states retain their historic police powers over health, safety, and land-use matters, to the extent they do not unreasonably burden or directly govern rail operations. (*Friends of the Eel River v. N Coast Railroad Auth.* (2017) 3 Cal. 5th 677, 720-722.)

X. Conclusion

With the construction of a new intermodal rail facility, the Authority and BNSF have a unique opportunity to showcase a state-of-the-art zero-emission intermodal rail facility that could be used as a model for future rail facilities in the State. As with the development of any large freight project, such as the proposed Project, there is a tremendous opportunity to influence the path of future freight projects. By demonstrating the feasibility of operating a completely zero-emission intermodal rail facility, the Authority can prove that it is possible to develop a freight facility (e.g., port, warehouse, rail yard, etc.) that can result in economic growth without diminishing public health within nearby communities or exacerbate climate change. To this end, CARB urges the Authority to incorporate all zero-emission switcher and line-haul locomotives, trucks, on-site equipment within the proposed intermodal facility, and all other zero-emission technologies referenced in Section VII of this letter. While zero-emission technologies and invocations for locomotives continue to become more feasible, CARB urges the Authority to explore other cleaner models of transporting freight, such as zero-emission trucks.

In the Draft EIR/EIS, CARB urges the Authority and BNSF to include statutory considerations that address the disproportionate impacts on disadvantaged communities, provide alternative locations for the proposed intermodal rail facility, and evaluate the benefits of using all zero-emission trucks to transport freight rather than line-haul locomotives until the line-haul locomotives can operate in zero-emission mode for the entirety of their operation in the State. An HRA should be prepared for the Project that includes an evaluation of the health risk impacts associated with the proposed rail facilities in Colton and Lenwood. The air quality impact analysis and HRA should be based on mobile emission factors obtained from the latest version of EMFAC.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the Revised NOP for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your State Clearinghouse list of selected State agencies that will receive the Draft EIR/EIS as part of the comment period. If you have questions or require additional input, please contact Heather Arias, Division Chief, via email at heather.arias@arb.ca.gov.

Sincerely,

Richard W. Corey
Executive Officer

cc: See next page.

cc: State Clearinghouse
state.clearinghouse@opr.ca.gov

Carlo De La Cruz
Senior Campaign Representative
Sierra Club
carlo.delacruz@sierraclub.org

Lijin Sun
Program Supervisor
CEQA Intergovernmental Review
South Coast Air Quality Management District
lsun@aqmd.gov

Morgan Capilla
NEPA Reviewer
U.S. Environmental Protection Agency
Air Division, Region 9
capilla.morgan@epa.gov

Taylor Thomas
Research and Policy Analyst
East Yard Communities for Environmental Justice
tbthomas@eycej.org

Andrea Vidaurre
Policy Analyst
Center for Community Action and Environmental Justice
andrea.v@ccaej.org

Heather Arias, Chief
Transportation and Toxics Division
heather.arias@arb.ca.gov