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EXPEDITED ACTION REQUESTED

August 15, 2023

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ENTERED
Office of Proceedings
August 15, 2023
Part of
Public Record

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

Re: Finance Docket No. 35544, *DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction and Operation Exemption—In Victorville, Cal. and Las Vegas, Nev.*

Dear Ms. Brown:

This letter has reference to the Petition to Reopen filed in the above-captioned proceeding on March 27, 2019 by DesertXpress Enterprises, LLC d/b/a Brightline West (“DXE”). The Petition requested that the Board reopen its decision served on October 25, 2011 (the “*2011 Decision*”) for the purpose of revising a condition that required DXE to construct its proposed high-speed passenger line (the “DXE Line”) along the route designated as the Selected Alternative in the Federal Railroad Administration’s (“FRA’s”) July 8, 2011 Record of Decision (“ROD”).¹

¹ See *2011 Decision* at 1, 8.

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As the Petition to Reopen explained, DXE was acquired by Brightline Holdings LLC, an affiliate of Fortress Investment Group LLC, on March 4, 2019.² DXE subsequently determined that it would be more efficient, and environmentally beneficial, to implement the project with a number of modifications, including to construct certain segments of the DXE Line in the median between the northbound and southbound lanes of the I-15 highway and to utilize a single-track design with passing sidings rather than constructing an entirely double-track railroad.

The Board issued a Notice regarding DXE's Petition to Reopen on June 24, 2019.³ The 2019 Notice described the modifications proposed by DXE and observed that "[t]his alignment differs from that designated in the Selected Alternative."⁴ The Board indicated that its Office of Environmental Analysis ("OEA") would participate as a cooperating agency in FRA's reevaluation of its 2011 Final Environmental Impact Statement ("FEIS") and ROD in light of the proposed modifications to the DXE Line, and that "[t]he Board will address the petition to reopen after FRA has completed its review and issued its findings."⁵

FRA, in cooperation with OEA and other federal and state agencies, conducted a reevaluation of the "adequacy, accuracy, and validity of the [FEIS]" to determine whether the proposed changes to the alignment and design of the DXE Line necessitated the preparation of a supplemental EIS. On September 9, 2020, FRA issued a "Reevaluation Summary and Conclusion for the [DXE] High-Speed Train Project" (the "*FRA Reevaluation*").⁶ Based on its reevaluation of the project, FRA concluded that the proposed modifications to the DXE Line "do not constitute changes in the proposed action that would result in significant environmental impacts that were not evaluated in the DesertXpress FEIS."⁷ Accordingly, FRA concluded that "*a supplemental EIS is not required, and the Project Modifications are consistent with the proposed action described in FRA's 2011 FEIS and ROD.*"⁸

² See *Fortress Investment Group LLC—Continuance in Control Exemption—Central Maine & Quebec Railway US Inc., Ohio River Partners Shareholder LLC, and DesertXpress Enterprises, LLC*, Docket No. FD 36225 (STB served Oct. 11, 2018).

³ See *DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction and Operation Exemption—In Victorville, CA and Las Vegas, NV*, Docket No. FD 35544 (STB served June 24, 2019) (the "2019 Notice").

⁴ *Id.* at 2.

⁵ *Id.*

⁶ A copy of the *FRA Reevaluation* is appended to this letter as Attachment 1.

⁷ *FRA Reevaluation* at 1.

⁸ *Id.* at 2 (emphasis added).

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The *FRA Reevaluation* noted that further review of DXE's proposed modifications would be required pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. §306108). In order to comply with Section 106, FRA, in cooperation with the California State Historic Preservation Officer ("CA SHPO"), Nevada State Historic Preservation Officer ("NV SHPO"), the Advisory Council on Historic Preservation ("ACHP"), DXE and other interested parties, completed additional field work, identification and finding of effects, and developed a draft and final Programmatic Agreement and Historic Properties Treatment Plan ("PA") setting forth a detailed process for mitigating effects and identifying, evaluating and assessing potential impacts on historic or cultural resources of unanticipated and new discoveries associated with the DXE Line. FRA solicited public input on the draft PA during a comment period between December 16, 2022 and January 23, 2023. Thereafter, on July 28, 2023, FRA issued a final PA for execution by CA SHPO, NV SHPO, ACHP (the "Required Signatories") and certain other "Invited Signatories" (including DXE).⁹ As of August 15, 2023, all Required Signatories have executed the final PA, which is in full force and effect.

With the execution of the PA, FRA has now "completed its review and issued its findings" with respect to the proposed modifications to the DXE Line, as contemplated by the *2019 Notice*.¹⁰ Based on that review, FRA has determined that DXE's modifications to the project, including constructing a single-track design with passing sidings along an alignment in the median between the northbound and southbound lanes of the I-15 highway in lieu of the Selected Alternative described in the ROD, would not generate significant environmental impacts that were not previously considered in the 2011 FEIS and ROD. Accordingly, DXE's Petition to Reopen, which requests that the Board revise the condition in the *2011 Decision* to permit DXE to construct the DXE Line in a manner consistent with modifications evaluated by FRA, is now ripe for decision.

FRA's reevaluation of its prior environmental analysis – and, in particular, its conclusion that constructing the DXE Line as modified by DXE would be "*consistent with the proposed action described in FRA's 2011 FEIS and ROD*"¹¹ – clearly constitute changed circumstances that warrant reopening and modification of the *2011 Decision*. The route condition in the *2011 Decision*, as written, presents an obstacle to constructing the DXE Line along a more efficient alternative alignment that will mitigate the environmental impacts of construction (by utilizing an existing transportation corridor) and reduce the cost of building the line (by replacing double-track with a combination of single-track and passing sidings along certain portions of the route). Modifying the route condition, as requested by DXE, will harmonize the *2011 Decision* with

⁹ See Attachment 2, Letter dated July 28, 2023 from M. Ivie, FRA Deputy Federal Preservation Officer to A. Mack, Brightline West.

¹⁰ *2019 Notice* at 2.

¹¹ *FRA Reevaluation* at 2 (emphasis added).

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FRA's reevaluation of the project, and is fully consistent with the intent of that condition (*i.e.*, to ensure that DXE builds the line along an FRA-approved alignment).

The Board need not revisit the transportation merits of the *2011 Decision*. The Board previously found that the DXE Line will promote the national transportation policy by "providing additional transportation options and alleviating automobile congestion on the I-15 freeway, while also reducing air pollution and overall fuel consumption."¹² Those findings remain accurate today -- indeed, the DXE Line can play an important role in the nation's response to the threat of climate change, and reduce the number of vehicular injuries and fatalities, by taking millions of cars off the increasingly congested I-15 corridor. Granting DXE's Petition to Reopen will also further the current Federal policy encouraging the development of high-speed passenger rail service in the United States. As a bipartisan, bi-state group of 10 Members of Congress recently observed:

"Brightline West will serve as a powerful example of the possibilities of high-speed rail for other cities and regions and is well-positioned to advance the U.S. Department of Transportation's priorities related to multi-generational infrastructure investments, job creation, equity, and climate change resiliency and sustainability The system will also align with the Administration's climate goals by diverting millions of automobile users from I-15 onto a faster, more efficient, zero-emission transportation option."¹³

Finally, DXE requests that the Board give expedited consideration to the Petition to Reopen. The only remaining Federal regulatory approvals required to commence construction of the DXE Line are Board action on the Petition to Reopen in this proceeding and on DXE's pending Petition for Exemption in Finance Docket No. 36488.¹⁴ DXE's objective is to commence construction of the DXE Line before the end of the current year, so that it can initiate

¹² *2011 Decision* at 3.

¹³ See Attachment 3, Letter dated April 24, 2023 from Members of Congress to Honorable Pete Buttigieg at 1, 2.

¹⁴ See *DesertXpress Enterprises, LLC—Authority to Construct and Operate – Petition for Exemption from 49 U.S.C. §10901 – Passenger Rail Line Between Victor Valley, CA and Rancho Cucamonga, CA.*, Docket No. FD 36488, Petition for Exemption filed April 13, 2021 (seeking an exemption from §10901 to extend the DXE Line west from Victorville, CA to a connection with the Metrolink system at Rancho Cucamonga, CA.)

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high-speed passenger rail service between Las Vegas and Southern California in time for the 2028 Summer Olympics hosted by the City of Los Angeles.

As Congresswoman Dina Titus recently told the Board:

“The urgency of this request comes at a time when a long-term solution is needed to address the highly trafficked I-15 corridor between Nevada and California, a route that is critical for the movement of goods and people. Additionally, Brightline West is estimated to generate more than \$10 billion in economic activity and \$1 billion in tax revenue. It will create more than 35,000 construction jobs and 1,000 permanent jobs; agreements are in place that guarantee the creation of good-paying union jobs. . . .

Accordingly, I strongly urge your consideration for prioritizing decisions on the related petitions for exemption associated with the project.”¹⁵

For the foregoing reasons, DXE respectfully requests that the Board reopen this proceeding, and revise the condition set forth in the *2011 Decision* (at 8, paragraph 1) to provide (changes to original condition in italics):

“Under 49 U.S.C. § 10502, the Board exempts the construction and operation of the above-described passenger Line and related rail facilities from the prior approval requirements of 49 U.S.C. § 10901, subject to the environmental mitigation measures set forth by FRA in Appendix A of the ROD (*as modified by FRA*), and the requirement that DXE build the FRA-designated *route alignment and project design in accordance with any FRA reevaluation of the project.*”

¹⁵ See Attachment 4, Letter dated July 27, 2023 from Rep. D. Titus to STB Chairman M. Oberman (and Board Members) at 1-2.

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Please direct any questions regarding this letter to the undersigned counsel for DesertXpress Enterprises, LLC. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Terence M. Hynes". The signature is written in a cursive style with a horizontal line above the first name.

Terence M. Hynes

Counsel for DesertXpress Enterprises, LLC

TMH:mdm

cc: Parties of Record

Danielle Gosselin (OEA)

Andrea Poole (OEA)

Attachment 1

REEVALUATION SUMMARY AND CONCLUSION FOR THE XPRESSWEST HIGH-SPEED TRAIN PROJECT

1.0 INTRODUCTION

This memorandum documents the Federal Railroad Administration's (FRA) conclusion that a supplemental Environmental Impact Statement (EIS) is not required for the XpressWest High-Speed Train Project (Project).

In March 2011, FRA issued the *Final EIS and Final Section 4(f) Evaluation for the Proposed DesertXpress High-Speed Passenger Train Victorville, California to Las Vegas, Nevada* (DesertXpress FEIS). FRA subsequently issued a Record of Decision (ROD) for the Project in July 2011. However, the Project did not proceed to construction. In 2018, DesertXpress Enterprises, LLC proposed certain design modifications to the Project. While FRA did not have any approvals relating to the Project, FRA agreed to work with other Federal and State agencies and DesertXpress Enterprises, LLC to prepare a written reevaluation. The purpose of the reevaluation was to provide the agencies with the information necessary to determine whether a supplemental EIS is needed under the National Environmental Policy Act (NEPA).

In accordance with FRA's *Procedures for Considering Environmental Impacts* (64 Fed. Reg. 28545, May 26, 1999), if major steps toward implementation of the proposed action have not occurred within the time frame, if any, set forth in the final EIS, or within five years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared, and a new or supplemental EIS prepared, if necessary. The attached written reevaluation evaluates whether new information, changes in circumstances, or design refinements to the proposed action (collectively referred to as Project Modifications) require the preparation of a supplemental EIS.

2.0 Summary of Findings

Generally, a supplemental EIS is necessary if:

- (1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or
- (2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.¹

FRA assessed the Project Modifications against the proposed action described in the DesertXpress FEIS and ROD. FRA determined the Project Modifications would result in similar impacts to those evaluated in the DesertXpress FEIS, and concluded the Project Modifications would reduce the overall impacts from the proposed action. Based on the analysis and findings in the attached written reevaluation, FRA finds that the Project Modifications do not constitute changes in the proposed action that would result in significant environmental impacts that were not evaluated in the DesertXpress FEIS.

¹ See 40 C.F.R. § 1502.9(c).

In addition, FRA did not identify new information or circumstances relevant to environmental concerns regarding the proposed action that would result in new significant impacts. As described in the written reevaluation, FRA identified any regulatory changes since the issuance of the DesertXpress FEIS and ROD, and analyzed the affected environment to ensure the conclusions of the DesertXpress FEIS and ROD remained valid given the passage of time and updates to the regulatory setting. FRA concludes the DesertXpress FEIS and ROD remains adequate, accurate, and valid.

3.0 Mitigation Commitments

As stated in the reevaluation, DesertXpress Enterprises, LLC will implement the mitigation measures listed Attachment I, Mitigation Measure Summary, which were refined to account for the Project Modifications.

4.0 Related Environmental Laws

The purpose of the reevaluation is to provide sufficient information to determine whether a supplemental EIS is required under NEPA. However, FRA continues to work with relevant Federal and State agencies to complete reviews required by other environmental laws. For example, concurrently with the preparation of this written reevaluation, FRA is working with the appropriate consulting parties to complete the Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108).² FRA will also work with the Federal Highway Administration and the State Departments of Transportation to conduct an evaluation under Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303), as necessary. DesertXpress Enterprises, LLC must secure all other approvals necessary to commence construction activities.

5.0 Conclusion

Based on the foregoing and the analysis in the written reevaluation, FRA concludes that a supplemental EIS is not required, and the Project Modifications are consistent with the proposed action described in FRA's 2011 FEIS and ROD.

Approved by:



Division Chief

Environment and Project Engineering, FRA

9/9/2020
Date:

² The Programmatic Agreement for the proposed action, executed in 2011, expired prior to initiation of this reevaluation. As a result, FRA reinitiated consultation under Section 106 of the NHPA, and will develop an agreement document memorializing the completion of the Section 106 consultation.

Attachment 2



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Federal Railroad
Administration**

July 28, 2023

Andrew Mack
SVP, Development Strategy & Permitting
Brightline West
6700 Via Austi Pkwy, Suite B
Las Vegas, NV 89119

**RE: Brightline West – Las Vegas To Victor Valley Project (formerly known
as XpressWest High-Speed Passenger Train Project) San Bernardino
County, California, and Clark County, Nevada Continuing
Consultation – Transmittal of Programmatic Agreement For Signature**

Dear Mr. Mack:

The Federal Railroad Administration (FRA) is pleased to provide the final version of the *Programmatic Agreement Among the Federal Railroad Administration, the California State Historic Preservation Officer, the Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation, Regarding the Brightline West – Las Vegas to Victor Valley Project in Baker, Yermo, and Barstow, in San Bernardino County, California, and in Las Vegas and Primm, in Clark County, Nevada*. Your individual signature page is enclosed and due to the size of the document you will receive a separate email from the U.S. Department of Transportation Secure Large File Transfer Solution website to download the Programmatic Agreement. Please note that FRA has already signed the agreement and our signature page is imbedded within the PDF.

FRA requests your organization sign and return your signature page no later than August 14, 2023. FRA has requested the Nevada State Historic Preservation Officer (NV SHPO), California State Historic Preservation Officer (CA SHPO), and Invited Signatories sign the agreement in counterparts. Following receipt of signatures from the CA SHPO, the NV SHPO, and the Invited Signatories, FRA will provide notification to the Advisory Council on Historic Preservation so they may be the last Signatory Party to sign.

Once FRA receives all of the signatures from Signatories and Invited Signatories, we will compile the final executed version and distribute this to the Signatories and Invited Signatories. Due to their size, FRA will post the final agreement, minus confidential appendixes, to Brightline West – Las Vegas to Victor Valley Project (Project) EGNYTE website. Confidential appendixes will be provided to those parties noted for receipt of confidential information. The

July 28, 2023

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Programmatic Agreement will be distributed to all Consulting Parties for concurrence after the agreement is executed.

Should you have any questions, or if we can assist you, please contact either Matthew Mielke, Project Manager, at 202-536-8157 or matthew.mielke@dot.gov or myself, at 279-977-2508 or melissa.ivie@dot.gov. Please send your individual signature page to me at melissa.ivie@dot.gov. If you prefer to print, wet sign, and mail your original signature page, please send the signed signature page to:

HNTB Corporation, c/o Angela Rothman
777 108th Avenue NE
Suite 1000
Bellevue, WA 98004

Thank you for your continued participation in this process. We look forward to continuing to work with you on this Project.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Ivie".

Melissa Ivie
Deputy Federal Preservation Officer
Federal Railroad Administration

Cc: Matthew Mielke, FRA
Melissa Ivie, FRA
Kimberly Demuth, HNTB
Micah Hale, Dudek

Attachment 3

Congress of the United States
Washington, DC 20510

April 24, 2023

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

Dear Secretary Buttigieg,

We write to express our strong support of the Nevada Department of Transportation's (NDOT) application to the U.S. Department of Transportation's Federal-State Partnership for Intercity Passenger Rail Grant. This application requests funding through the Bipartisan Infrastructure Law for the Brightline West high-speed rail system along the congested Interstate 15 corridor, connecting Southern California to Nevada.

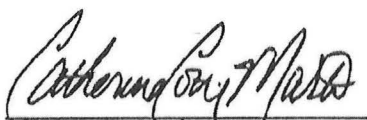
This unprecedented funding opportunity for intercity high-speed rail will unleash private investment at a critical moment for our nation, demonstrating the potential for public-private partnerships and planting a flag for American high-speed rail. Brightline West will serve as a powerful example of the possibilities of high-speed rail for other cities and regions and is well-positioned to advance the U.S. Department of Transportation's priorities related to multi-generational infrastructure investments, job creation, equity, and climate change resiliency and sustainability.

Brightline West will connect Nevada and Southern California through planned stations in Las Vegas and San Bernardino County, with connectivity into Los Angeles County through Metrolink. The project will bolster additional economic activity for both states, with an estimated \$10 billion in economic impact and \$1 billion in tax revenue. According to Brightline West's current plan, the project is expected to create over 35,000 construction jobs and approximately 1,000 permanent jobs, creating pathways for workforce development, training, and access to quality jobs. This includes a commitment through a Memorandum of Understanding (MOU) to ensure the creation of good-paying union jobs. As seen through other transit areas, the development of a new transit system will provide opportunities for ancillary development around station areas, spurring additional economic activity for communities along the corridor. High-speed rail connecting Nevada and California also has the potential to significantly increase visitors to both states, boosting travel and tourism across the region.

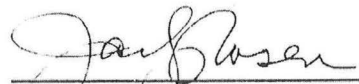
The system will also align with the Administration's climate goals by diverting millions of automobile users from I-15 onto a faster, more efficient, zero-emission transportation option. Each year, Brightline West operations will remove an estimated 3 million vehicles and over 700 million vehicle miles traveled from the highway, as well as 400,000 tons of CO2 emissions from the atmosphere, supporting California's and Nevada's respective greenhouse gas emissions reduction goals and leading the way for cleaner travel options for Americans. Moreover, the project will reduce congestion on I-15, leading to a faster and more enjoyable travel experience for both drivers and riders alike.

For the above reasons, this bipartisan delegation from Nevada and California are pleased to support the federal resources necessary to develop essential transportation access between this highly trafficked corridor between our two states. We are excited about the mobility and economic benefits the project will bring, from job creation to reduced congestion to the potential for increased tourism and economy activity. For these reasons, we ask you to give your full and fair consideration to the grant application and provide critical funding to enable this transformational project to move forward as expeditiously as possible. If you have any questions, please reach out to us or our staff.

Sincerely,



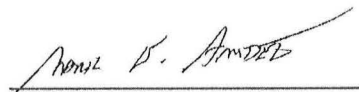
Catherine Cortez Masto
United States Senator



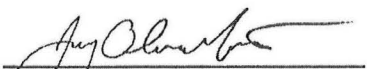
Jacky Rosen
United States Senator



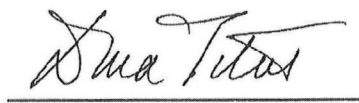
John Garamendi
Member of Congress



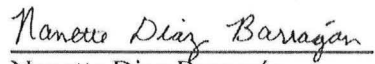
Mark E. Amodei
Member of Congress

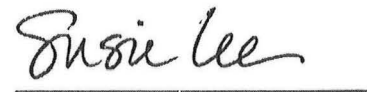


Jay Obernolte
Member of Congress

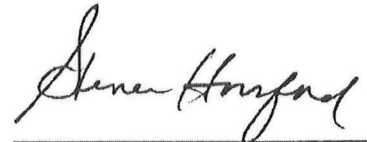


Dina Titus
Member of Congress


Nanette Diaz Barragán
Member of Congress


Susie Lee
Member of Congress


Jimmy Gomez
Member of Congress


Steven Horsford
Member of Congress

Attachment 4



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

306891

July 27, 2023

ENTERED
Office of Proceedings
July 27, 2023
Part of
Public Record

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

**RE: DesertXpress Enterprises, LLC Petitions for Exemption from 49 USC§ 10901 –
Finance Docket No. 35544 and Finance Docket No. 36488.**

Dear Chairman Oberman,

I write to strongly urge the Surface Transportation Board (STB) to expeditiously give consideration to the petitions filed by DesertXpress Enterprises, LLC's dba Brightline West in Docket No. FD 35544 and Docket No. FD 36488 which are necessary in order to begin construction of a high-speed passenger rail system between Las Vegas, Nevada, and Rancho Cucamonga, California.

As you may know, earlier this month, the Federal Railroad Administration concluded its final environmental review for the Brightline West system and issued a Finding of No Significant Impact (FONSI). Accordingly, the next step in the process for construction to begin on the project is consideration from the STB on the filed petitions for exemption.

Currently, the Federal Railroad Administration (FRA) is considering an application from the Nevada Department of Transportation (NDOT) to the U.S. Department of Transportation's Federal-State Partnership for Intercity Passenger Rail grant opportunity. This program, established by the Infrastructure Investment and Jobs Act (Public Law 117-58), will provide historic funding for unleashing the potential of high-speed rail in the United States. Brightline believes that the project will be the domestic standard-bearer for this program, and will serve as an example for cities across the country that are seeking to leverage this quick and sustainable mode of transportation.

The urgency of this request comes at a time when a long-term solution is needed to address the highly trafficked I-15 corridor between Nevada and California, a route that is critical for the movement of goods and people. Additionally, Brightline West is estimated to generate more than \$10 billion in economic activity and \$1 billion in tax revenue. It will create more than 35,000

construction jobs and 1,000 permanent jobs; agreements are in place that guarantee the creation of good-paying union jobs.

The proposed high-speed rail project has the potential to significantly increase visitors to California and Nevada, boosting travel and tourism across the region. Additionally, the system will reduce highway congestion by diverting millions of automobiles from I-15 to a faster, more efficient, zero-emission transportation option. Estimates show that over 700 million vehicle miles traveled will be removed annually from the highway which will eliminate more than 400,000 tons of CO2 emissions from the atmosphere.

Since the STB is the federal regulatory agency tasked with granting authority to construct and operate interstate railroads, obtaining final approvals is essential to support the Brightline West project's financing activities and an eventual 2023 groundbreaking. Accordingly, I strongly urge your consideration for prioritizing decisions on the related petitions for exemption associated with the project.

If you require further information, please do not hesitate to contact Mitch Moonier at (202) 225-5965 at your convenience. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "Dina Titus".

Dina Titus
Member of Congress

cc: The Honorable Karen J. Hedlund, Vice Chairman
The Honorable Patrick J. Fuchs
The Honorable Michelle A. Schultz
The Honorable Robert E. Primus