

San Manuel Band of Mission Indians

June 2, 2021

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Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
Patriot's Plaza 1
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
June 3, 2021
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Public Record

RE: Finance Docket No. 36488

Dear Ms. Brown:

Thank you for granting an extension to the deadline for submitting comments to the Petition of Exemption (**Petition**) as requested by the San Manuel Band of Mission Indians (**San Manuel**) in our May 3, 2021 Letter (**May 3, 2021 Letter**). Please find our additional comments below, which touch upon many of the same concerns that were raised in the May 3, 2021 Letter, including the lack of National Environmental Policy Act (**NEPA**) and Section 106 of the National Historic Preservation Act (**NHPA**) compliance by the Federal Railroad Administration (**FRA**). Instead of repeating such concerns, the May 3, 2021 Letter has been attached hereto and incorporated herein.

San Manuel remains concerned with the Petition, as it seeks to exempt a large, California located project with significant impacts from review under the California Environmental Quality Act (**CEQA**). Furthermore, we remain concerned with the commitment of all agency and private parties to comply with federal law. As we would respectfully remind the Board, your agency's approval of projects under its jurisdiction is conditioned on the project's compliance with Section 106 of the NHPA and NEPA, as required by both federal statutes and the Board's regulations (see 49 C.F.R. Part 1105, 40 C.F.R. §§ 1500 to 1518 and 36 C.F.R. § 800.2(c)(4)). Furthermore, under NEPA, 42 U.S.C. §§ 4331-4335, the Board is required to examine the potential environmental impacts of many actions subject to its jurisdiction. Under such statutes and regulations, the Board's approval of the project must be withheld until the project has met its requirements under Section 106 of the NHPA and NEPA.

To date, there has been no initiation of NHPA or NEPA review for the Victorville to Rancho Cucamonga line. Moreover, with the related Victorville to Las Vegas project serving as an illustration, San Manuel is concerned that proper environmental and cultural resources compliance will not be completed (see May 3, 2021, letter describing San Manuel's concerns with the project's lack of compliance with federal law). Furthermore, the submission of the Petition prior to NEPA and NHPA compliance is, in and of itself, a signal that the pattern of noncompliance will continue.

That said, even if all involved agencies change course and faithfully undertake all required and necessary federally-mandated environmental and cultural reviews to ensure that all resource classes are properly identified, assessed, and avoided or mitigated, the Tribe believes that the lack of compliance with federal laws should not exempt petitioner from CEQA. It is common for many projects to go through both NEPA and CEQA, undergoing one environmental review process conducted to meet the requirements of both statutes. Indeed, the White House's Council of Environmental Quality and the California Governor's Office of Planning and Research have jointly put out a handbook "to provide practical suggestions on developing a single environmental review process that can meet the requirements of both statutes" (see "NEPA and CEQA: Integrating Federal and State Environmental Review" attached hereto). The Victorville to Rancho Cucamonga privately operated high speed train project should not be treated any differently from the many other projects that are able to prepare one environmental review to meet the requirements of both CEQA and NEPA. Moreover, specially exempting this project would significantly impair the protections for cultural resources and other elements within CEQA that are not mirrored in NEPA, including but not limited to the differences detailed below.

Firstly, with the adoption of the California Public Resource Code Section 21080.3.1 which was enacted pursuant to Assembly Bill No. 52 - Native Americans: California Environmental Quality Act (2013-2014) (also known as AB52), the California State Legislature specifically set forth to establish a meaningful consultation process with California Native American tribal governments to promote their involvement in the planning process for projects in order to, among other things, (1) identify impacts to tribal cultural resources and Native American burials early in order to preserve the options of avoidance or preservation in place and (2) determine the treatment and disposition with Native American tribes in advance of discovery of cultural resources and Native American burials. California Native American tribes have a right and reasonable expectation to see such tenets preserved, because the AB52-based revisions to CEQA clearly evinces a distinct desire of the State of California to include a separate set of sovereign entities, Native American Tribes, in their environmental regulatory process.

Secondly, CEQA has other key protections not provided in NEPA. For example, CEQA ensures that in instances where the final environmental decision promises to mitigate impacts upon resources, the government must monitor the project and ensure sufficient funding is provided to confirm that the promised mitigation is fully realized. NEPA provides for no such monitoring and oversight. CEQA also addresses California species of concern, including those of particular importance to Native American Tribes. Issues surrounding habitat and migration corridors of non-federally endangered species of desert big horn sheep were not addressed for the Victorville to Las Vegas line, despite being a California species of concern that is actively monitored by the California Department of Fish and Wildlife (CDFW). Not being listing as a federally endangered species created a situation where this animal's health was not addressed in a NEPA supplemental evaluation—which would have been appropriate given the ongoing and recent challenges this species has faced and its deep cultural significance to southern California tribes such as San Manuel.

Finally, CEQA requires the development of a "statement of overriding considerations" when a project is deemed to have environmental impacts. This process, not required under NEPA, protects the citizens of California and state resources from being harmed by a project being constructed and/or implemented without stated justification.

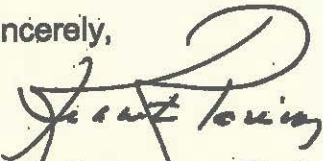
For all of the reasons outlined above, San Manuel strongly urges the Board to not permit the exemption of the project from CEQA review. To do so would deny sovereign California Native American nations recourse under laws specifically meant to formalize the role of these tribes in protecting their ancestral cultural resources, minimize public and agency partner consultation and review, and overlook California natural resources of concern that CEQA uniquely addresses.

Also, we would ask that, should the Board desire to further entertain this requested exemption, the Board—at the minimum—consult with experts and stakeholders - such as those thirty-five federally recognized Indian tribes, including San Manuel, who, on October 10, 2019, expressed concern that the Victorville to Vegas line had not complied with consultation requirements with tribal stakeholders, thus threatening ancestral Native American cultural resources, and pointed out the need for AB-52 consultation (see October 10, 2019, letter by the California Nations Indian Gaming Association to Governor Gavin Newsom attached hereto.)

Finally, should the Board desire to grant the Petition of Exemption from CEQA review, we ask that such an exemption not be granted until (1) FRA completes its Section 106 compliance and prepares an adequate and appropriate Memorandum of Agreement in consultation with the Native American Tribes and the State Historic Preservation Officers for California and Nevada (the SHPOs) and (2) that any grant of such Petition require compliance with the Native American consultation requirements of AB52. In short, San Manuel does not believe that the Board should take away the protections that state environmental review would provide to cultural and biological resources when the FRA has failed to properly review such impacts as required by federal laws, including Section 106 of the NHPA and NEPA.

Thank you again for considering our comments and extending the deadline as we requested and required in order for us to provide our comments herein.

Sincerely,



Kenneth Ramirez, Chairman
San Manuel Band of Mission Indians

Cc: The Hon. Gavin Newsom, Governor
The Hon. David Kim, Sec. of CA Dept. of Transportation
The Hon. Toks Omishakin, Dir. of the CA Dept. of Transportation

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RE: Finance Docket No. 36488

Dear Ms. Brown:

The San Manuel Band of Mission Indians (**San Manuel**), a federally recognized tribal government, has recently been made aware of the Surface Transportation Board's receipt of the April 13, 2021 Petition for Exemption filed on behalf of DesertXpress Enterprises, LLC and DesertXpress HSR Corp. Given our reduced staffing and the continued reallocation of our talent due to COVID-19, we are unable to fully respond to the petition with thorough comment by May 3, 2021.

As such, I respectfully ask that the Board allow us to submit our comments on the Petition of Exemption by no later than June 3, 2021, allowing us sufficient time to fully review the petition, and to provide comment on the impact granting of such would have on our cultural and historic homelands located within the identified areas of this project.

Just a cursory review of the petition reveals a number of inaccurate, contradictory and incomplete statements regarding the status of the review of impacts on cultural resources and tribal consultation required under Section 106 of the National Historic Preservation Act (**NHPA**) and the review under the National Environmental Policy Act (**NEPA**).

The Federal Railroad Authority (**FRA**) concluded that the modified project would encounter new archaeological resources and historic built environment resources that were not previously evaluated, but that these cultural resources identified within the modified project footprint are of a similar type and quality as the resources originally evaluated in the Environmental Impact Statement (**EIS**). These determinations were made without appropriately defining the area of potential effects (**APE**) for the project, which led to an incomplete identification of resources. Furthermore, the "type and quality" assessments were not conducted in a manner that included any tribal consultation on the subject of National Registry of Historic Places (**NRHP**) eligibility or assessment of effect. These conversations, which are required under the NHPA, have yet to be conducted.

FRA claims they prepared a Cultural Resources Technical Report to document this reevaluation, but these reports, by FRA's own admission in their March 18, 2021 letter to San Manuel remain incomplete due to outstanding issues with APE delineation and resource identification. To date no technical reports have been distributed to stakeholders, including San Manuel, for review and comment.

FRA notes that during the preparation of the EIS, FRA, the cooperating agencies, and the State Historic Preservation Offices, with input from the Applicant and Native American tribes, developed a Programmatic Agreement (PA) in compliance with Section 106. What they conveniently leave out is that several Tribes, including San Manuel, objected both to the use and content of the PA and because of these objections, refused to sign as a concurring party.

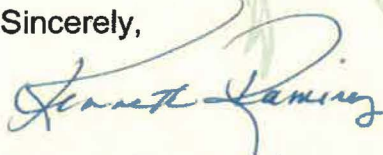
FRA claims that as part of the Reevaluation, they prepared draft technical reports to identify and evaluate historic archeological and built environment resources. This is a misleading overstatement. As noted above these reports remain incomplete and uncirculated. In addition, their reevaluation was based on insufficient information.

FRA claims that in accordance with 36 C.F.R. Part 800, they intend to continue to move forward with the Section 106 process in consultation with the appropriate parties and use a PA—which parties have supported—to meet 106 compliance goals. This is not accurate statement of their consultation efforts to date and the support for a PA—which the California Tribes have continually rejected.

As to the NEPA reevaluation, despite repeated inquiries into the status of their NEPA reevaluation and San Manuel's obvious interest in contributing to the conversation, FRA refused to engage San Manuel on this subject and did not even deign to notify San Manuel of their September 2020 decision.

Thank you for your consideration of this request.

Sincerely,



Kenneth Ramirez, Chairman
San Manuel Band of Mission Indians

Cc:

The Hon. Gavin Newsom, Governor

The Hon. David Kim, Sec. of CA Dept. of Transportation

The Hon. Toks Omishakin, Dir. of the CA Dept. of Transportation



October 10, 2019

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

Dear Governor Newsom

The 35 federally recognized tribes who are members of the California Nations Indian Gaming Association (CNIGA) would like to express its formal opposition to the State Treasurer's decision of September 18, 2019, to issue \$300 million in tax-exempt private activity bonds to help finance an ill-conceived privately operated high-speed rail project between the Victorville and Las Vegas, Nevada.

California's tribal governments are strong supporters of the construction of transportation infrastructure throughout California. However, our member tribes believe it is extremely unwise and short-sighted to put California taxpayer dollars at high risk to fund a foreign company's efforts to take, by their estimates, 5.5 million California tourists to Nevada by cutting a rail line across Serrano Ancestral Territory.

As proposed, the project would rely on travelers driving 90 minutes to two hours from Los Angeles (far longer if they make that trip on a Friday afternoon up the Cajon Pass) to Victorville, park their cars, buy a \$60 ticket each way and ride the train to Las Vegas. Any claim that this project takes vehicles off the freeways is false.

From an economic perspective, Southern California has benefited greatly from the enormous investments made in its amusement parks, hotels, wineries, shopping centers, Tribal casinos, sports teams and arenas. Much of this investment has come from California companies and Tribes who are part of the social and economic fabric of our region. Tribes in particular have an unparalleled commitment to their communities. We are tied to the land and will not pick up and leave, unlike private companies based in Florida or overseas. Putting California taxpayer dollars at risk to undermine this investment, as well as the tens of thousands of Californians who are employed by Southern California's hospitality industry, does not appear to be in the interest of the State or its residents.

Further, the proposed \$300 million in private activity bonds exceeds the indebtedness that Nevada is willing to take on, even though our neighboring state stands to be the sole beneficiary of this project. The Treasurer's decision ties California to a company that is already deeply in debt and is seeking hundreds of millions of dollars more in bonds for this rail line and to extend a failing rail line in Florida. According to the company's own SEC reports, it had a net loss of \$87 million in the first nine months of 2018 and net loss of \$36 million in 2017.

Protecting the sovereign right of California tribes to operate gaming on their lands.

While the new owners propose that the project stay within the easement of Interstate 15, it relies on environmental data that is likely outdated and will need a significant reexamination. From a cultural resources perspective, the Section 106 analysis will need to be revisited for the length of the project. During a meeting hosted by the Bureau of Land Management between the project applicant and affected Tribes, the Tribes expressed a clear desire to have all cultural resource identification occur early and robust studies be performed without generating archeological collections. Where the project leaves the Interstate 15 easement, we anticipate the project will need to meet California Environmental Quality Act requirements, such as AB52 consultation, as well as an independent economic impact report that takes into account the projects impact to not only the High Desert, but to the Counties of Los Angeles, Orange, Riverside and San Bernardino.

The State has made enormous strides to right past wrongs and strengthen its relationship with the Tribes of California. A careful reexamination of its decision to issue these private activity bonds would be an effective way to avoid adding to its history of missteps in Indian Country.

Sincerely,

A handwritten signature in cursive script that reads "Steven Stallings". The signature is written in a dark ink and is positioned above the printed name and title.

Steve Stallings
Chairman
California Nations Indian Gaming Association

Cc: Anna Naimark
Christina Snyder

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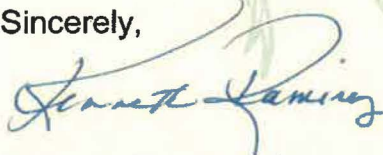
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Steve Stallings
Chairman
California Nations Indian Gaming Association

Cc: Anna Naimark
Christina Snyder

I, Diane Jones, certify that I have provided electronic service to all parties to this proceeding.

Diane Jones 6/3/2021
Diane Jones Date

