

SERVICE DATE – JUNE 24, 2019

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. FD 35544

DESERTXPRESS ENTERPRISES, LLC, AND DESERTXPRESS HSR CORPORATION—
CONSTRUCTION AND OPERATION EXEMPTION—IN VICTORVILLE, CAL. AND
LAS VEGAS, NEV.

Decided: June 24, 2019

On July 28, 2011, DesertXpress Enterprises, LLC (DesertXpress), and its wholly-owned subsidiary, DesertXpress HSR Corporation (collectively, DXE) filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate an approximately 190-mile double-track rail line for high-speed passenger rail service between Victorville, Cal., and Las Vegas, Nev. (the Line). The Federal Railroad Administration (FRA), with the cooperation and participation of the Board's Office of Environmental Analysis (OEA), conducted an environmental review of the proposed project by preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act.¹ Following an examination of the entire record on both the transportation merits and environmental impacts, the Board, by decision served on October 25, 2011 (October 2011 decision), granted the petition for a construction and operation exemption, subject to environmental conditions and the condition that DXE construct the route along the FRA-designated Selected Alternative.

On March 27, 2019, DesertXpress filed a petition to reopen this proceeding, seeking modification to the condition in the October 2011 decision directing construction of the Line along the Selected Alternative route. DesertXpress states that, during the years following the October 2011 decision, it was actively engaged in development and planning for construction of the Line. (Pet. to Reopen 3.) However, DesertXpress states that its original owners decided that a sale of the company would best promote completion of the project. According to DesertXpress, the owners entered into an agreement on September 17, 2018, to sell a

¹ On July 8, 2011, FRA published its Record of Decision (ROD), approving the environmentally preferred alternative for the route, facilities, and technology (Selected Alternative), subject to 146 mitigation measures to avoid or minimize potential adverse environmental impacts. (See DXE Pet. for Exemption, Ex. D (July 28, 2011).)

100% membership interest in the company to Virgin Trains US LLC (formerly Brightline Holdings LLC) (Virgin Trains), an affiliate of Fortress Investment Group LLC. (Id. at 4.)²

According to the petition, when contemplating its acquisition, Virgin Trains determined that it would be more efficient to construct the Line primarily in the median between the northbound and southbound lanes of the I-15 freeway and utilize a single-track configuration with passing sidings. This alignment differs from that designated in the Selected Alternative. The petition states that FRA has agreed to reevaluate its environmental review of the Final EIS issued in October 2010. (Id. at 5.) The Final EIS informed FRA's 2011 ROD, which approved the Selected Alternative. DesertXpress therefore asks the Board to reopen this proceeding and modify the 2011 routing condition.

DesertXpress' petition to reopen will be addressed in a subsequent decision. FRA has agreed to reevaluate the environmental review relied upon by the Board in the October 2011 decision in light of the alignment changes now proposed by DesertXpress. OEA will participate in that process as a cooperating agency. The Board will address the petition to reopen after FRA has completed its review and issued its findings.

By the Board, Allison C. Davis, Director, Office of Proceedings.

² See Fortress Inv. Group—Continuance in Control—Cent. Me. & Que. Ry., FD 36225 (STB served Oct. 11, 2018).