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EXPEDITED ACTION REQUESTED

September 19, 2023

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:

The purpose of this letter is to update the Surface Transportation Board (“STB” or “Board”) regarding certain developments related to DXE’s letter filed in the above-captioned proceeding on August 15, 2023 (the “*August 15 Letter*”). The *August 15 Letter* requested that the Board expedite its decision with respect to the Petition to Reopen filed on March 27, 2019 by DesertXpress Enterprises, LLC d/b/a Brightline West (“DXE”). The Petition to Reopen requested that the Board revise the condition set forth in its October 25, 2011 decision (the “*2011 Decision*”) that required DXE to construct its proposed high-speed passenger rail 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 *August 15 Letter* explained, FRA, in cooperation with OEA and other federal and state agencies, conducted a reevaluation of the previously-issued Final Environmental Impact Statement and ROD to determine whether certain proposed changes to the alignment and design of the DXE Line necessitated the preparation of a supplemental EIS. FRA issued a “Reevaluation Summary and Conclusion for the [DXE] High-Speed Train Project” (the “*FRA Reevaluation*”), in which FRA concluded that “the Project Modifications are consistent with the proposed action described in FRA’s 2011 FEIS and ROD,” so that a supplemental EIS was not required.² FRA also conducted a review of DXE’s proposed modifications pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. §306108), which included additional field work and the identification of, and findings with respect to, potential effects of the proposed modifications. The Section 106 process culminated in the issuance of a final Programmatic Agreement and Historic Properties Treatment Plan (“PA”) on July 28, 2023. The PA has been executed by all Required Signatories and is in full force and effect.

As context in further support of DXE’s request, on September 15, 2023, FRA issued an additional reevaluation that considered certain other proposed design modifications to the DXE Line consistent with the updated alignment (the “*FRA Additional Reevaluation*”).³ The modifications evaluated in that document included moving additional track miles along the Las Vegas – Victorville route (as well as the Victor Valley station building) into the median between the northbound and southbound lanes of the I-15 highway, relocating certain maintenance-of-way and vehicle maintenance facilities, and adding temporary construction areas. Primarily to accommodate the median alignment, the modifications considered in the *FRA Additional Reevaluation* also included adjustments to the design of several highway ramps and automobile traffic lanes (in cooperation with the Federal Highway Administration, Caltrans and the Nevada Department of Transportation), and constructing two additional crossovers for emergency vehicles.⁴ Based on its analysis of those modifications, FRA determined that

“the project modifications would generally avoid or minimize the overall effects of the project described in the 2011 DesertXpress EIS. In addition, FRA concluded that the project, in consideration of the new information evaluated by FRA, would not result in new

² See *August 15 Letter*, Attachment 1.

³ See Attachment 1, *Reevaluation Summary and Conclusions Brightline West High-Speed Passenger Train Project* (September 15, 2023) (“*FRA Additional Reevaluation*”).

⁴ The proposed modifications are described in detail in the *FRA Additional Reevaluation* at 2.

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significant impacts to cultural resources and wildlife connectivity beyond the effects described in the 2011 DesertXpress EIS.”⁵

Thus, FRA has determined that the modifications considered in its reevaluation of the DXE Line will not generate significant environmental impacts. To the contrary, these FRA-approved alignment and design modifications will reduce the environmental impacts of construction, create a more efficient DXE rail infrastructure, provide enhanced access for emergency vehicles, and improve the adjacent highway network. Accordingly, those modifications clearly promote the goals of the Rail Transportation Policy set forth at 49 U.S.C. § 10101.

As the *August 15 Letter* explained, the route condition in the *2011 Decision*, as written, poses an obstacle to implementing the project modifications approved by FRA. Revising the route condition is both necessary and appropriate to harmonize the *2011 Decision* with FRA’s more recent findings with respect to the alignment and design of the DXE Line. DXE respectfully requests that the Board expedite this proceeding, and revise the condition set forth in the *2011 Decision* (at 8, paragraph 1) in the manner requested by DXE in the *August 15 Letter*.

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

Sincerely,



Terence M. Hynes
Counsel for DesertXpress Enterprises, LLC

TMH:mdm

cc: Parties of Record
Danielle Gosselin (OEA)
Andrea Poole (OEA)

⁵ *Id.*

Reevaluation Summary and Conclusions Brightline West High-Speed Passenger Train Project¹

I. Introduction

This memorandum documents the Federal Railroad Administration's (FRA) conclusion that a supplemental environmental document is not necessary for the *Final Environmental Impact Statement and Final Section 4(f) Evaluation for the Proposed DesertXpress High-Speed Passenger Train Victorville, California to Las Vegas, Nevada* issued in March 2011 and Record of Decision (ROD) issued in July 2011 (collectively referred to as the 2011 DesertXpress EIS).

Following FRA's issuance of the 2011 DesertXpress EIS, the project did not proceed to construction. In 2018, the project sponsor (Brightline West) proposed modifications to the project's design, which FRA evaluated and determined did warrant preparation of a supplemental environmental document (September 2020 Reevaluation). Subsequently, Brightline West proposed additional design modifications, which FRA evaluated to determine whether supplemental environmental analysis is necessary for the project modifications (2023 Reevaluation).

II. Standard for Reevaluating Environmental Documents

A reevaluation is a review conducted by the agency of any proposed change in an action, affected environment, anticipated impact, applicable requirements, or mitigation measure as they relate to the environmental document or decision. The purpose of a reevaluation is to determine whether an environmental document or decision remains valid. A reevaluation is a continuation of the project development process, though it does not necessarily reopen the NEPA decision. However, a reevaluation is not considered supplemental analysis or a supplemental environmental document.

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.²

The 2023 Reevaluation includes an assessment of the design modifications and new information relevant to the affected environment, regulatory setting and project effects that have occurred since the September 2020 Reevaluation and, where applicable, incorporates the September 2020 Reevaluation by reference.

III. Summary of Project Changes and Available Information

¹ The project was previously referred to as the DesertXpress Project and was later referred to as the XpressWest High-Speed Train Project.

² See 40 CFR 1502.9(c).

The modifications to the project's design are documented in Attachment A – Project Changes of the 2023 Reevaluation and consist of modifications to the rail alignment and the Victor Valley station, freeway ramp realignments and emergency crossovers, and ancillary features, including a substation, maintenance of way facility and vehicle maintenance facility. In addition, FRA received information relevant to FRA's environmental analysis of potential impacts to cultural resources, including historic properties of religious and cultural significance to federally recognized tribes, and wildlife connectivity.

FRA concluded that the project modifications would generally avoid or minimize the overall effects of the project described in the 2011 DesertXpress EIS. In addition, FRA concluded the project, in consideration of the new information evaluated by FRA, would not result in new significant effects to cultural resources and wildlife connectivity beyond the effects described in the 2011 DesertXpress EIS.

IV. Mitigation Commitments

The 2011 DesertXpress EIS prescribed specific mitigation measures to address significant impacts from implementation of the project. FRA updated these measures in the 2020 reevaluation. FRA has further updated these measures, which are documented in Attachment D – Mitigation Measure Summary of the 2023 Reevaluation. If FRA provides federal funding to construct the project, FRA will incorporate these measures into the applicable funding agreement between FRA and the recipient of federal funds.

V. Related Environmental Reviews

FRA consulted under Section 106 of the National Historic Preservation Act (Section 106) for the project modifications. Through consultation, FRA determined the project would result in adverse effects to historic properties and, FRA and the signatories executed a Programmatic Agreement (PA)³ on August 15, 2023, which establishes a process to resolve adverse effects. Compliance with the terms of the PA fulfills FRA's obligations under Section 106.

FRA reinitiated consultation with the U.S. Fish and Wildlife Service (USFWS), under Section 7 of the Endangered Species Act, for the project modifications. USFWS recommended updates to the mitigation measures described in the project's Biological Opinion prepared in 2011. FRA incorporated these revised mitigation measures into the 2023 Reevaluation. On September 1, 2023, USFWS concluded re-initiation of formal Section 7 consultation was not required for the project.

Through the Section 106 consultation, FRA determined the project would result in an adverse effect to historic properties, specifically certain archeological districts. These districts are also protected under Section 4(f) of the Department of Transportation Act (Section 4(f)). FRA determined the project would result in the use of a Section 4(f) resource and completed a Section 4(f) evaluation. FRA determined there was no feasible and prudent alternative to avoid the use of the archeological districts and that the project included all possible planning to minimize harm.

³ FRA executed a PA for the project on February 15, 2011; however, the PA expired by its own terms.

VI. Decision

Based on the information and analysis in the 2023 Reevaluation, FRA concludes the project modifications and new information do not warrant preparation of a supplemental environmental document.

Approved by:



Marlys Osterhues, Director
Office of Environmental Program Management, FRA

09/15/2023

Date: