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ENTERED
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EXPEDITED ACTION REQUESTED

Via Email

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

Re: Docket No. FD 35544, *DesertXpress Enterprises, LLC and DesertXpress HSR Corp. -- Construction and Operation Exemption -- In Victorville, CA and Las Vegas, NV*

Dear Ms. Brown:

This letter has reference to the Petition to Reopen filed in the above-captioned proceeding by DesertXpress Enterprises, LLC ("DesertXpress") on March 27, 2019. The Petition requested that the Board reopen its decision in *DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction and Operation Exemption—In Victorville, CA and Las Vegas, NV*, Docket No. FD 35544 (served Oct. 25, 2011) (the "*2011 Decision*") for the purpose of revising a condition that required DesertXpress to construct its proposed high-speed passenger line along the route designated by the Federal Railroad Administration ("FRA") in its July 8, 2011 Record of Decision ("ROD").¹ The FRA-designated route alignment contemplated a double-track rail line to be located almost entirely on the north/west side of the I-15 freeway travel lanes (referred to as the "side-running alignment").

As the Petition to Reopen explained, DesertXpress was acquired by Brightline Holdings LLC (formerly known as Virgin Trains USA LLC), an affiliate of Fortress Investment Group

¹ See *2011 Decision* at 1, 8.

SIDLEY

Cynthia T. Brown
September 15, 2020
Page 2

LLC, on March 4, 2019.² Brightline subsequently determined that it would be more efficient, and environmentally beneficial, to construct certain segments of the DesertXpress line in the median between the northbound and southbound lanes of the I-15 freeway and to utilize a single-track design with passing sidings rather than constructing an entirely double-track railroad.

The Board issued a Notice regarding DesertXpress' Petition to Reopen on June 24, 2019.³ The 2019 Notice described the modifications proposed by DesertXpress and observed that "[t]his alignment differs from that designated in the Selected Alternative." *Id.* at 2. The Board indicated that the Board's Office of Environmental Analysis ("OEA") would participate as a cooperating agency in FRA's reevaluation of the FEIS in light of the proposed modifications, and that "[t]he Board will address the petition to reopen after FRA has completed its review and issued its findings." *Id.*

FRA has notified DesertXpress that it has completed its reevaluation and has concluded that a supplemental EIS is not required in connection with the proposed project modifications. DesertXpress understands that FRA's reevaluation findings (including a summary of the modifications approved by FRA) have been communicated to the cooperating agencies, including OEA.

FRA's environmental approval of DesertXpress' proposed modifications to the alignment and design of the line constitutes a changed circumstance that warrants reopening of the 2011 Decision. The condition in the 2011 Decision requiring DesertXpress to construct the line along the "side-running alignment" contemplated by the ROD conflicts with FRA's recent designation of a modified alignment and related design changes. In order to harmonize the Board's 2011 Decision with the FRA's reevaluation findings, the Board should revise its route condition to authorize DesertXpress to build the line along the modified alignment with the design changes approved by FRA in its reevaluation of the project.⁴

Finally, DesertXpress requests that the Board give expedited consideration to the Petition to Reopen. Closing on a series of public activity bonds to finance construction of the line is scheduled to occur on or about September 30, 2020. From and after that date, interest will

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

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

⁴ The Board need not revisit the 2011 Decision's findings with respect to the transportation merits of the Line. None of those findings would be affected by substituting the modified I-15 median alignment for the side-running alignment previously designated by FRA.

SIDLEY

Cynthia T. Brown
September 15, 2020
Page 3

accrue on the bonds. Each day that DesertXpress incurs interest expense on the bonds without being able to proceed with the project will increase the overall cost of constructing the line.

Accordingly, DesertXpress respectfully requests that the Board grant it's pending Petition to Reopen and revise the route condition at page 8 of the *2011 Decision* to provide that "DesertXpress may build the route alignment and project design designated by FRA in its reevaluation of the project, subject to compliance with the environmental mitigation measures in Appendix A of the ROD (as modified by FRA's reevaluation)."

Sincerely,

/s/ Terence M. Hynes

Terence M. Hynes
Counsel for DesertXpress Enterprises, LLC

TMH