

San Manuel Band of Mission Indians

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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
May 5, 2021
Part of
Public Record

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.

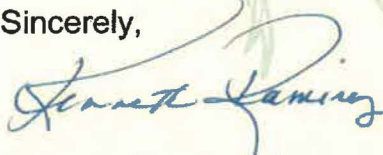
FRA claims that as part of the Reevaluation, they prepared draft technical reports to identify and evaluate historic archeological and built environment resources. This is a misleading overstatement. As noted above these reports remain incomplete and uncirculated. In addition, their reevaluation was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



RE: FD-36488

I certify that I have this day served copies of this document upon all parties of record in this proceeding electronically.

A handwritten signature in black ink, appearing to read "Kevin Eastman", is written over a horizontal line. The signature is fluid and cursive.

Kevin Eastman

May 5, 2021