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MORONGO
BAND OF
MISSION
INDIANS



A SOVEREIGN NATION

June 4, 2021

To Whom it May Concern –

This is to verify that copies of the attached letter dated May 28, 2021 to the Surface Transportation Board from the Morongo Band of Mission Indians were emailed to the following parties of record on June 4, 2021:

thynes@sidley.com

diane.jones@sanmanuel-nsn.gov

REdelman@mooneygreen.com

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Thank you for your attention to this. Please contact me with any questions.

Sincerely,

Diane Vitols
In House Counsel
Morongo Band of Mission Indians

May 28, 2021

Via Email to: Cynthia.Brown@stb.gov

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

**MORONGO
BAND OF
MISSION
INDIANS**



A SOVEREIGN NATION

RE: Finance Docket No. 36488

Dear Ms. Brown:

The Morongo Band of Mission Indians is aware that the Surface Transportation Board (the Board) has received a Petition for Exemption filed April 13, 2021 on behalf of DesertXpress Enterprises, LLC and DesertXpress HSR Corp. We are concerned that the petition fails to acknowledge the true impact this project could have on lands which have a culturally significant tie to our tribe and several other tribes in the region. The petition fails to fulfill the tribal consultation process required under Section 106 of the National Historic Preservation Act (NHPA) and the required review under the National Environmental Policy Act (NEPA).

In consultation with other California Tribes, we have identified the following areas where the Board should be concerned when considering the petitioner's request:

The Federal Railroad Authority (FRA) has determined that the modified project would encounter new archaeological resources and historic built environment resources that were not previously evaluated, but FRA minimized that issue by claiming that the 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 significant cultural 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 also claims that they prepared a Cultural Resources Technical Report to document this reevaluation, but these reports, by FRA's own admission in a March 18, 2021 letter to the San Manuel Band of Mission Indians, remain incomplete due to outstanding issues with APE delineation and resource identification. To date, no technical reports have been distributed to stakeholders, including Morongo or any other Tribe, for review and comment.

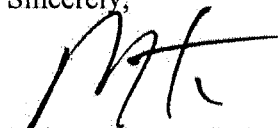
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Cynthia T. Brown, Chief
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FRA notes that during the preparation of the EIS, FRA, the cooperating agencies, and the State Historic Preservation Offices, with input from the Applicant and Native American tribes, developed a Programmatic Agreement (PA) in compliance with Section 106. But what they conveniently fail to explain in the petition is that several Tribes 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. However, this is a misleading characterization of the status of the work. 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 to use a PA—which parties have supported—to meet 106 compliance goals. This is not an accurate statement of their consultation efforts to date and does not accurately reflect the lack of support for a PA, which the California Tribes have consistently rejected. For these reasons, we oppose the April 13, 2021 petition and urge your denial of the exemption.

Sincerely,



Robert Martin, Chairman
Morongo 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

NB:

Additional copies of this letter were emailed June 4, 2021 to the following parties of record:

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