

April 25, 2023

Via Email

Danielle Gosselin
Director Office of Environmental Analysis
Surface Transportation Board
Patriot's Plaza 1
395 E. Street, SW
Washington, DC 20423

Re: Finance Docket No. 36488, DesertXpress Enterprises, LLC –Authority to Construct and Operate – Petition for Exemption from 49 U.S.C. § 10901 – Passenger Rail Line Between Victor Valley, CA and Rancho Cucamonga, CA Status Update on Environmental Analysis

Dear Ms. Gosselin:

The purpose of this letter is to provide a status update of activities associated with the environmental review process in connection with the Petition for Exemption from 49 U.S.C. § 10901 for the construction and operation of a high-speed passenger rail line between Victor Valley and Rancho Cucamonga, CA (VV-RC Project) filed in the above-captioned proceeding on April 13, 2021. The VV-RC Project will form part of the electrified high-speed passenger railroad system that DesertXpress Enterprises, LLC, d/b/a Brightline West (BLW) plans to construct between Southern California and Las Vegas, Nevada.

The Federal Railroad Administration (FRA) is the lead agency for review in accordance with the National Environmental Policy Act of 1969 (NEPA). FRA initiated the environmental compliance process for the VV-RC Project in November 2021. Cooperating agencies under NEPA include: FHWA California Division; U.S. Army Corps of Engineers, Los Angeles District; the Surface Transportation Board (STB); Caltrans; and Yuhaaviatam of the San Manuel Nation. The approved Environmental Assessment (EA) was posted for public review in October 2022. The EA concluded:

“...that the Project will not result in a significant impact on the environment. Furthermore, FRA has determined the Project would not result in disproportionately high and adverse effects on low-income and/or minority environmental justice (EJ) populations, pursuant to EO 12898.

EJ-specific outreach to affected communities will be conducted to inform local community members of the Project and its status, to provide opportunities for EJ communities, including Tribes, to take part in the planning process for the Project, and so that FRA can understand the potential impacts of the Project.”¹

In July 2022 FRA initiated consultation with US Fish and Wildlife Service (USFWS) in accordance with Section 7 of the Endangered Species Act (ESA). Following completion of the Biological Assessment and formal consultation that started in September 2022, USFWS issued its Final Biological Opinion (BO) on April 6, 2023, including all applicable conservation measures and jeopardy findings.

FRA is also the lead agency for compliance with Section 106 of the National Historic Preservation Act (S106). FRA initiated consultation with S106 consulting parties in November 2021. FRA completed a Class III cultural resources inventory consisting of surface and subsurface investigations in April 2022. The surface investigation included an intensive-level pedestrian survey of approximately 1,200 acres and a reconnaissance-level survey of approximately 1,700 acres. The subsurface inventory consisted of approximately 300 test units distributed over the areas subject to intensive-level survey.

In September 2022, FRA completed the draft *Archaeological Resources Inventory and Eligibility Report – Brightline West Cajon Pass High-Speed Rail Project* and the *Historic Built Environment Technical Report – Brightline West Cajon Pass High-Speed Rail Project* regarding the identification and eligibility of built environment historic properties within the Area of Potential Effect (APE). FRA revised the reports based on feedback from the State Historic Preservation Officer (SHPO) and other Consulting Parties. FRA received concurrence on the built environment NRHP eligibility determinations from the SHPO in February 2023. In March 2023, the SHPO issued a letter to FRA in which it stated no objection to FRA’s archaeological resources NRHP eligibility determinations.

On April 14, 2023, FRA distributed to the S106 consulting parties including the Office of Environmental Analysis (“OEA”) the draft effects reports for the assessment of effects to individual historic properties within the APE and for the Project as a whole, which included the following findings:

- FRA’s proposed resource-specific findings of **no adverse effects** to individual built environment historic properties for the Project;
- FRA’s proposed resource-specific findings of **no adverse effects** to individual archaeological historic properties for the Project;
- FRA’s proposed finding of **no adverse effect** for the Project as a whole;
- FRA’s inadvertent discoveries and post-review discoveries process; and
- To request OEA’s review and comment on the submitted documents and FRA’s findings.

¹ FRA Environmental Assessment Brightline West Cajon Pass High-Speed Rail Project October 2022, pg. xvii

In its transmittal of the finding of no adverse effect, FRA indicates that it considered development of a Programmatic Agreement (PA) to govern amendments to the APE and resultant additional identification of historic properties and assessment of effects and determined that it is unnecessary given that the Project APE is not expected to be amended and the Project design has progressed such that the assessment of effects as documented is unlikely to change. FRA has developed a process to resolve any adverse effects upon previously unidentified historic properties, historic properties (including Traditional Cultural Landscapes and Traditional Cultural Properties) with previously unknown or undocumented eligibility under the NRHP criteria, or cultural resources that have recently reached the age threshold for consideration for eligibility for listing in the NRHP. This post-review discoveries process is documented in the *Draft Inadvertent Discoveries and Post-Review Effects Treatment Plan*, which is included with FRA's finding of No Adverse Effect. The S106 process is currently expected to be completed by July 2023.

Additional information regarding the environmental clearance process can be found at the following links:

FRA Project Webpage: <https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/brightline-west-cajon-pass-high-speed>

Environmental Permitting Dashboard: <https://www.permits.performance.gov/permitting-project/brightline-west-cajon-pass-high-speed-rail-project>

In addition to the environmental and permitting work described above, BLW has also made significant progress toward key project development milestones required for implementation including:

- Primary definitive agreements have been executed or are in advanced stages of development for the BLW high-speed rail project to be constructed between Las Vegas and Victor Valley, CA (LV-VV Project).
- In October 2021, BLW executed a memorandum of understanding with the California State Transportation Agency, Caltrans, and the California High-Speed Rail Authority to recognize progress on the LV-VV Project and provide a framework for concurrently constructing the contiguous VV-RC Project, thereby creating a single high-speed rail system that will connect Greater Los Angeles with Las Vegas. The Rancho Cucamonga station will be located adjacent to an existing Metrolink commuter rail station that will provide connectivity for travelers between Las Vegas and points throughout the Southern California passenger rail network.

In June 2020, Caltrans and BLW executed a lease agreement for BLW's use a portion of the width of the I-15 right of way between the California/Nevada state line and Victor Valley, California for construction of the part of the BLW system between those locations. Caltrans and BLW have prepared a similar agreement for BLW to lease a portion of the width of the I-15 freeway right of way between Victor Valley and Rancho Cucamonga for construction of most of the length of the AV/RC Line.

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- Caltrans conducted a public notice of intent process related to the agreement and received no negative comments in response. The parties will execute the agreement upon completion of environmental and federal permitting.
- In October 2022, BLW executed a Disposition and Development Agreement with the City of Rancho Cucamonga and the San Bernardino County Transportation Authority (SBCTA) that will provide BLW control of the property it requires for the final mile of the VV-RC alignment from the I-15 right of way to the BLW station in Rancho Cucamonga as well as BLW's Rancho Cucamonga station site. Earlier in 2022, BLW and SBCTA executed a lease for additional property needed for the railroad alignment along that final mile of the system.
- Advanced design of rail infrastructure and highway elements in the following discipline areas: highway modification; stormwater management and drainage; Caltrans bridge modifications or replacements; rail bridges; retaining walls; geotechnical investigations and reports; survey layout; utility identification, relocation, and protect-in-place planning; rail-highway interface barrier system; conduit layouts; and substantial advancement on high-speed rail systems elements such as electrification, overhead catenary system layout, traction power, communications, signal control system, and systems integration.
- BLW and the Nevada Department of Transportation (NDOT) have submitted an application for a federal grant through the 2021 Infrastructure Investment and Jobs Act. Grant funds would be used for construction of BLW facilities in both Nevada and California. BLW, NDOT, and Caltrans have executed a memorandum of understanding regarding coordination among the parties in relation to oversight of any grant funds received, including use of an independent engineer to provide oversight services regarding use of grant funds in both states.

Please let me know if you need any additional information or have any questions regarding the above summary.

Sincerely,



Andrew Mack
SVP Development, Strategy, and Permitting