

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

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 to Reopen that was filed in the above-captioned proceeding on March 27, 2019 in relation to the electrified high-speed passenger railroad project that DesertXpress Enterprises, LLC d/b/a Brightline West (BLW) plans to construct between Las Vegas, NV and Victor Valley, CA (LV-VV Project) as part of the BLW system that will connect Southern California with Las Vegas.

In the Petition to Reopen, BLW requests that the Board modify the condition set forth in its October 11, 2011 Decision to authorize BLW to construct the LV-VV Project along the alignment approved by Federal Railroad Administration (FRA) in its reevaluation of the Record of Decision (ROD).

Following BLW's submittal of project modifications, including a refined alignment located primarily within the median of I-15 and modified station sites in Las Vegas, NV and Apple Valley, CA, FRA conducted a reevaluation of its 2011 Final Environmental Impact Statement (FEIS) and ROD (the "NEPA Reevaluation") in accordance with FRA's Environmental Procedures to determine the adequacy, accuracy, and validity of the FEIS and whether a new or supplemental EIS would be necessary. NEPA cooperating agencies include: the Bureau of Land Management, Surface Transportation Board, Federal Highway Administration, and the US Army Corps of Engineers, with the added participation of the California Department of Transportation (Caltrans) and the Nevada Department of Transportation (NDOT).

The NEPA Reevaluation was completed in September 2020. FRA's NEPA Decision Memo dated September 9, 2020 stated:

“FRA did not identify new information or circumstances relevant to environmental concerns regarding the proposed action that would result in new or significant impacts.... FRA concludes the DesertXpress FEIS and ROD remains adequate, accurate, and valid....[and] that a supplemental EIS is not required, and the Project Modifications are consistent with the proposed action described in FRA's 2011 FEIS and ROD.”¹

Concurrently with the NEPA Reevaluation, in July 2020, FRA sought concurrence from the US Fish and Wildlife Service (USFWS or Service) that the project modifications do not require re-initiation of formal consultation under Section 7. FRA determined this approach was appropriate because impacts to species listed as threatened or endangered and to critical habitat have been substantially reduced, and no new impacts would occur as a result of the project modifications that were not previously addressed in the Biological Opinion (BO) issued for the project. In October 2020, USFWS concurred with FRA's determination that re-initiation of formal consultation was unnecessary because none of the proposed changes met the re-initiation criteria at 50 Code of Federal Regulations (CFR) 402.16. However, USFWS noted that the protective measures included in the original consultation were outdated because the Service had modified several of its protocols since issuance of the BO in 2011. In May 2021, USFWS issued updated BO Protective Measures and reaffirmed its concurrence with FRA.

FRA also serves as lead agency for compliance with Section 106 of the National Historic Preservation Act (S106). Concurrently with the NEPA Reevaluation, FRA reinitiated S106 consultation and has completed cultural resources inventory, evaluation of National Register of Historic Places (NRHP) eligibility of cultural resources, and assessment of effects caused by the undertaking to historic properties within the area of potential effects (APE). Those efforts have been documented in draft and final technical reports, communicated to Consulting Parties through letters and one-on-one meetings, and discussed in meetings of the Cultural Resources Working Group (CRWG). FRA has received comments from Consulting Parties and considered those comments for revisions to technical reports and when making determinations of effects caused by the undertaking.²

The nature of the project's anticipated design refinements requires a phased approach for ongoing compliance with Section 106, and the project also requires a process for avoiding, minimizing, and/or mitigating adverse effects. As a result of these project considerations, FRA has completed a draft Programmatic Agreement (PA) to govern the phased approach for ongoing compliance with Section 106 and implementation of the resolution of adverse effects. The draft PA establishes a process for future identification, evaluation, assessment of effects, and consultations if needed based on changes in the APE or an inadvertent discovery of NRHP eligible cultural resources. A draft Historic Properties Treatment Plan (HPTP) is included as one of the attachments to the draft PA.³

¹ FRA NEPA Decision Memo September 9, 2020 <https://railroads.dot.gov/elibrary/xpresswest-nepa-decision-memo-final-september-9-2020>

² <https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/brightline-west-las-vegas-victor-valley>

³ Ibid.

FRA circulated the draft PA, HPTP, and related appendices in December 2022. CRWG meetings were held in January 2023. Revised draft documents and responses to comments were circulated to S106 Consulting Parties in March 2023, with additional CRWG meetings held to consult on the revised documents. We expect that this month FRA will distribute the third draft PA and related documents together with responses to additional comments received during the workshops, and that a final PA will be circulated for signature in May 2023. This will complete the S106 process and enable the Board to proceed with its decision on the Petition to Reopen.

In addition to the environmental and permitting activities described above, significant progress has been made in advancing toward implementation of the project including the following:

- Caltrans and BLW entered an agreement dated June 19, 2020 for BLW to lease a portion of the width of the I-15 freeway right of way between Apple Valley, California and the California/Nevada state line for construction of the part of the LV-VV Project between those locations. FHWA has given written concurrence for the Lease.
- Caltrans and BLW executed a Design and Construction Agreement dated August 24, 2020 for the portion of the LV-VV Project between the California/Nevada state line and Apple Valley. BLW and NDOT likewise executed a Design and Construction Agreement dated September 9, 2020 in relation to the portion of the project to be built between the California/Nevada state line and Las Vegas.
- BLW has executed a Developer Agreement with NDOT and is working with both Caltrans and NDOT toward permits for construction.
- 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 a second, contiguous project between Victor Valley and Rancho Cucamonga, CA (VV-RC Project), in order to create 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.
- 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.

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- The California Public Utilities Commission (“CPUC”) has approved 32 of the 50 grade-separated crossings to be constructed between the California/Nevada state line and Apple Valley. In response to a cooperative effort between BLW and CPUC staff, the CPUC has adopted a resolution procedure that will simplify and shorten the administrative process for obtaining CPUC approval for all remaining crossings on the BLW system.
- BLW has received substantial design approval and is finalizing a construction and maintenance agreement with Burlington Northern Santa Fe Railroad (BNSF) for a major high-speed rail viaduct crossing the BNSF railroad in Barstow, CA. BLW is in similarly advanced discussions with Union Pacific Railroad regarding grade-separated crossings of its lines.
- BLW and 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