



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
www.ca.blm.gov/barstow

May 29, 2009

21-11112



In Reply Refer To:
1790(P)
CA-680.40

U.S. Department of Transportation
Federal Railroad Administration
Attn: David Valenstein
Environmental Program Manager
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. Valenstein:

The Barstow Field Office and the Needles Field Office of the Bureau of Land Management (BLM) have reviewed the Draft Environmental Impact Statement (DEIS) and 4(f) Evaluation for the proposed DesertXpress High-Speed Passenger Train (DXE), and would like to provide the attached comments for your consideration. The BLM would like to sit down with you to discuss opportunities to meet both of our agencies' objectives while moving forward with this project.

The BLM is required under current Departmental regulations to be a Cooperating Agency based on its jurisdiction by law (the BLM is the agency required to issue a right-of-way for this project under provisions of the Federal Land Policy and Management Act) and special expertise or knowledge of public lands resources and issues. The BLM is providing comments as the managing agency of the federal lands over which the majority of the proposed train route (approximately 85 percent) would cross.

Some specific issues need to be resolved in order to meet minimum requirements for the BLM to make appropriate decisions. Many of these issues were brought forward in past communications. If left unresolved, the BLM will be unable to make a final decision based on this document. This would result in the necessity to complete an additional EIS before BLM could issue a decision authorizing a right-of-way across public lands. The BLM highly recommends issuance of a revised DEIS for public and agency review prior to the issuance of a Final EIS (FEIS). Summarized below are several items the BLM believes are critical for decision-making purposes:

- The DEIS is lacking a viable alternative which can easily be identified as the preferred alternative. The EIS must analyze a viable route for each segment. The BLM understands that a lot of effort has recently gone into resolving this issue; however, the DEIS does not reflect this new information.

- From the BLM's perspective, there has not been adequate coordination with the U.S. Fish and Wildlife Service (FWS) regarding the Biological Opinion. The BLM's regulations do not allow signature of a Record of Decision until after Section 7 Consultation is complete and the FWS has issued a signed Biological Opinion.
- There is a need for further communication with the National Park Service (NPS). The proposed action, which passes through the Mojave National Preserve, would benefit from NPS involvement and is critical to the success of this project.
- There has not been adequate coordination with the State Historic Preservation Officers for California and Nevada.
- There has not been adequate consultation with Tribes. The BLM recently conducted a series of Tribal Listening Sessions. At the session in Palm Springs, several Tribes expressed concerns that they received materials too late to provide substantive comments.
- There has not been adequate coordination with the City of Barstow. The City of Barstow has expressed strong concerns regarding the absence of an alternative that provides a stopping point in Barstow. Further coordination with Barstow may help resolve this issue by providing a reasonable alternative that warrants analysis.
- There has not been adequate coordination with potentially affected parties such as energy development applicants and current rights-of-way holders such as CAL TRANS/NDOT for land under consideration in any of the alternatives. The BLM realizes that additional discussions have taken place; however, this coordination and the possible outcomes have not been discussed in the DEIS.
- The Purpose and Need as identified in the DEIS restates the applicant's Purpose and Need. If the EIS would identify each federal agency's Purpose and Need, it would help focus roles and responsibilities, as well as expected outcomes after the NEPA process is completed. Without this focus, it is probable that some federal agencies would not be able to make appropriate decisions after the FEIS is complete.

With the alternatives identified in the DEIS, there is no alternative the BLM can choose as a preferred alternative other than the No Action alternative. Generally, the BLM chooses a preferred alternative prior to release of a DEIS. After revision of the alternatives (based on the following paragraphs and attached comments), the BLM may be able to choose a preferred alternative for the revised DEIS or the FEIS. This is necessary whether the BLM is the lead agency or a cooperating agency.

There has been no resolution of the route proposed to run through the Mojave National Preserve. The NPS indicated in previous meetings that it cannot authorize this route, and did not indicate otherwise at the December 10, 2008 meeting. According to the administrative draft Biological

Assessment (BA) received December 3, 2008, this is the proposed route alternative on which Federal Railroad Administration (FRA) proposes to consult with the FWS. Since the BLM would, as a cooperating agency, hope to adopt this document for its review of the proposal and alternatives, the BLM must have this issue resolved prior to publication of the revised DEIS or the FEIS.

Based upon feedback from the NPS, it would appear that before it was feasible to pursue this alternative, legislation would be required. Additional requirements needed for this (or any other) alternative to be selected should be clearly identified in the revised DEIS. The FWS has voiced its concerns with initiating consultation on an action that is not the preferred alternative and would like this issue resolved.

In order for the BLM to grant a right-of-way for an alternative route that does not pass through the Preserve, a Biological Assessment must address the route of the preferred alternative. This may require additional biological surveys.

Because an alternative that does not go through the Preserve has not been analyzed in the DEIS and no consultations or resource surveys have been conducted, there may be biological, cultural or other concerns that would require additional mitigation.

There is a need for additional consultation with Tribal entities on this project. FRA initiated tribal consultation in March 2007; but at that time, the information for the project was conceptual and general. While some informal discussions occurred during the period before release of the DEIS, the substantive information which the Tribes were waiting to comment on was sent to them in May 2009. During the Intertribal working group meeting on May 20, 2009, the group discussed concerns about the May 22, 2009 deadline for comments on the cultural package sent to the Tribes earlier in the month. The Tribes have expressed concern that the deadline is inadequate for responses and are requesting more time to comment. Representatives of the Morongo Tribe stated at this meeting that they did not receive the cultural package until May 18, 2009. Two other Tribes, San Manuel and Soboba, indicated that they had received the information for the first time earlier in May 2009, and are requesting more time for review. These two Tribes have not received responses from FRA to concerns voiced at the Victorville Tribal consultation meeting on this project conducted just after release of the DEIS on April 30, 2009. Timely responses to those concerns may help the Tribes in their review of this proposed project.

With respect to other conflicts with route alternatives (such as the overlapping right-of-way applications for the solar facility in eastern San Bernardino County, utility rights-of-way, and existing highway rights-of-way), these issues should be addressed specifically in the EIS. Bringing these conflicts to light will undoubtedly provide the basis for additional public and agency comments as well as information necessary for the BLM Authorized Officer to determine which alternative will be in the public interest.

The Purpose and Need appears to be the same one as that of the project proponent. These statements should be identified as the proponent's Purpose and Need. The Purpose and Need for the federal agencies should be added to the document. For example, the BLM's need is to consider a right-of-way application, consistent with Section 501 et seq. of the Federal Land Policy and Management Act.

Chapter One (Section 1.5) should indicate the major public issues raised during scoping and the conflicts with other rights-of-way or existing uses, including the context of issues and conflicts. Integrating the design, routing, or mitigation elements from various alternatives into the Alternatives chapter should address or avoid these issues and conflicts.

The document should indicate how FRA is handling the analysis of design decisions in areas where DXE has not yet made design decisions. For example, a strategy should be outlined early in Chapter 2 for analysis of the impacts of 21 road crossings that could be overhead, underground, or at grade, and other design or technology alternatives for which design level information is not available. In the absence of on-the-ground information on the construction footprint, the EIS should provide a basis for analysis and comparison. Likewise, impacts related to boring a tunnel through a mountain should be analyzed and the assumptions for analysis given. It appears that more land may be required for storage of cut and fill of materials. In consideration of the BLM's evaluation of a right-of-way application, the EIS must address the land that is to be considered for all aspects of this project. If a width greater than 60 feet is required, the EIS must identify these areas in order for BLM to consider inclusion of that land in the right-of-way.

The Affected Environment and Impacts Analysis chapter should address the direct and indirect impacts of the various alternatives to other land values and uses. This information has to be specific enough to be able to make a reasoned choice among alternatives and to identify appropriate mitigation to reduce significant impacts. In three landscape level planning efforts, mitigation or avoidance strategies for some resources, such as T&E and sensitive species, have been adopted for the entire route. The BLM must have enough information to be able to apply the mitigation and compensation strategies outlined in these efforts, or identify in what ways they may depart from the strategies in these plans and whether those departures are substantial. This is in addition to addressing them in the cumulative assessment, where appropriate.

In summary, known conflicts or issues raised during scoping should be adequately addressed in the Final Environmental Impact Statement (FEIS) in such a manner that it is clear to the public how FRA proposes to address those issues. If those issues are not going to be addressed, then rationale should be provided as to why not. Not all of the scoping information should be relegated to an Appendix. The Table in Section 1.2 of Appendix P which currently summarizes issues from public scoping and how they are being addressed, is not sufficiently clear such that someone reading it would know where to look in the DEIS to see how it is being addressed. It should be summarized and referenced in Chapter 1 and should be reviewed for accuracy. In addition, any changes to the Mojave National Preserve that would be required for the approval of a specific alternative needs to be clearly identified.

Many of these issues were identified previously, but have not been resolved. The BLM requests an agency-only meeting (including NPS and FWS) to discuss and resolve these issues.

Thank you for your consideration of these comments. Should you have any questions about the BLM's review or comments on this DEIS, please contact Resources Branch Chief, William "Mickey" Quillman (760-252-6020) or Environmental Coordinator, Edythe Seehafer (760-252-6021) of my staff. If I can be of assistance, please do not hesitate to call me directly at 760-252-6004. I look forward to meeting with you in the near future.

Sincerely

for Mickey Quillman
Roxie C. Trost
Field Manager

c.c. BLM District Manager, Steve Borchard (Attn: Alan Stein)
BLM Acting State Director, James Abbott (Attn: Tom Pogacnik)
BLM Needles Field Manager, Rusty Lee (Attn: Rodney Mouton)
BLM Las Vegas Field Manager, Angie Lara (Attn: Jane Miller)
Surface Transportation Board (Attn: Catherine Glidden)
NPS Park Superintendent, Mojave National Preserve, Dennis Schramm (Attn: Larry Whalen)
USFWS Field Supervisor Ventura Field Office, Diane Noda, (Attn: Ray Bransfield)

Attachment 1: DEIS Comments

COMMENTS ON THE DEIS FOR DESERTXPRESS

Executive Summary Map—this map (ES-1) should show that Alternative 4A would cross the Mojave National Preserve.

Table 1.4-1 Remove National Park Service from permit Table. There is no legal basis for National Park Service to issue a Right-of-Way Easement

Table 1.4-1 It is unclear what permit or approval is issued by STB.

1.5.3 Is the declaratory order the STB's sole action?

1.5-5 The National Park Service section is unclear. The last line states legislative and land exchange options are being considered by the NPS, BLM, and other key agencies. The BLM does not currently have any legislative or land exchange options under consideration. Clarify and specify which agencies are considering the connected actions and specify those connected actions. This alternative does not have a legal basis for approval nor is there any information provided that indicates that there is an expectation for a legal basis for review or permitting either prior to ROD or in the reasonably foreseeable future.

2.1.2 In the summary of the applicant's proposed action, 4A, Mountain Pass via southerly alignment (add "through the NE corner of the Mojave Preserve") across Nipton Road

2.4.4.1 Changing the route may encroach on the MNP and this should be clearly shown to maintain consistency with the remainder of the document and so there is no doubt from the map that the alternative would encroach on the MNP.

2.4.9.5 Add analysis of available power at Baker substation. With the Kinder Morgan pipeline, activation of a new pumping station in Baker will there available power for both projects? Is an upgrade required at the substation?

In addition, the new route alternative to include a Barstow Station option has not been previously discussed in a manner that addresses the City of Barstow's concerns. Is this a route Barstow would want—it appears to require the condemnation of houses through the middle of town. Other route options to address their issues should be discussed with the City of Barstow and Cooperating Agencies who may be affected to minimize or avoid unnecessary conflicts.

Page 3.1-3 Change MUC I to unclassified. None of the project is in MUC I. From map provided it appears that some of the project crosses unclassified land in addition to MUC L and MUC M land

Page 3.1-6 Remove reference to HCP. The West Mojave Plan amendment to the California Desert Conservation Area Plan analyzes included an HCP alternative. However, this alternative has not been adopted as an HCP by any entity. The alternative BLM adopted for the West Mojave Plan was Alternative B, which does not include the HCP components.

Page 3.1-9 Change from BLM owned to BLM managed. BLM manages land held in title to the United States of America. The BLM does not own land.

Paragraph 3.4.4.2

Analyze upgrade to substations. Upgrades to SCE facilities required to provide power for the EMU would be a connected action.

Page 3.6-26 Delete (the preferred action alternative within segment 2) A preferred action alternative has not been identified by the Federal agency. Delete or put in context as the applicant's proposed action.

Page 3.16-5 Clarify or identify figure locations. Are the figures the maps? BLM is unable to locate the figures.

ES-1: P&N; change "convenient alternative to automobile travel" to "convenient alternative to automobile and bus travel" Bus traffic between Victorville and Las Vegas may account for approx. 10% of the traveler volume between these two destinations.

1.4.1: The lead agency needs to select a preferred alternative in the very near future. This selection of a preferred alternative needs to occur by the lead agency, FRA prior to formal consultation with the FWS because this project is considered a federal action, thus requiring Sec. 7 of the ESA as per 50 CFR 402.14. Obtaining a biological opinion from the FWS is not technically considered a "permit." Further conformance with 50 CFR 402.14 would require that consultation occur as early in the project planning process as possible and surely not after the ROD has been approved if it is a irreversible and irretrievable commitment of resources. In other words, if subsequent decisions will be based on the selection of the route in this EIS, the decision has made a commitment of resources that is inappropriate prior to consultation on ESA. BLM cannot make a decision in the absence of a biological opinion issued under Section 7 if the action "may affect" T&E species.

Because this is a federal action and crosses the Mojave River, there may also be a requirement the FRA initiate consultation with the USACOE under Section 404 of the CWA under (see Title 33, USC, Chapter 26, Subchapter 1344). The required NPDES permit under Section 402 of the CWA would be issued by the Lahontan Regional Water Quality Control Board and should be issued to FRA, not the applicant.

3.14.2.3: Botanical surveys for almost any desert botanical species conducted in December is not considered reliable because most perennial species are in dormancy and may be difficult to identify, while most annual species are not present. This is especially true with native and non-

native herbaceous species. Specific survey protocols exist for sensitive species, including the appropriate windows for survey, and can be obtained from USFWS and/or CDFG.

3.14.3.1: Vegetative community typing done by remote sensing indicates that comprehensive ground based botanical surveys were not conducted. This is evident with the admission that no baseline surveys were conducted for invasive plant species (3.14-27). Change “noxious weed species” to “invasive weed species.” The term noxious is a legal term used by federal, state and county agricultural departments. The only noxious weed currently listed on page 3.14-27 and on CDFG’s noxious weed list (A-Rated) is halogeton (*Halogeton glomeratus*). Replace noxious with invasive where it occurs in the EIS except when referring specifically to halogeton. Under special-status plants, 48 species have been identified that could occur in the project study area. All California BLM FO’s require that ground-based surveys be conducted for special-status plants and conform to minimum survey standards contained in BLM Manual 6840-1 for this project type, consistent with policy. Since surveys were not conducted during Spring 2009 will surveys be conducted during Spring 2010? Appropriate mitigation would apply to conserve these species and their habitats.

3.14.4.1: Change “permanent loss of natural vegetation” to “permanent loss of native vegetation.”

3.14.4.5: Change “natural vegetative communities” to “native vegetative communities.” Change “Noxious weeds typically” to “Invasive, non-native species typically.”

3.14.4.5: When referring to the Loss of or Damage to Native Vegetation Communities this project must conform to the California Desert Native Desert Plant Act specifically concerning the loss of Yucca, Prosopis and other native desert succulent and cacti species, consistent with BLM policy.

3.14.5: Mitigation Measures BIO-4; The BFO requires all proponents to submit an Invasive Weed Monitoring and Treatment Plan for approval prior to implementation of the project. Would FRA/DXE have this prepared for the FEIS?

3.14.5: Mitigation Measures BIO-9; The BFO requires all proponents to submit an Erosion Control and Restoration Plan for approval prior to implementation of the project. Could FRA/DXE have this prepared for consideration of adequacy in the EIS analysis? When the Erosion Control and Restoration Plan is not submitted and a part of the analysis, it is difficult to consider the mitigation objectives and it is a more difficult process to place these mitigation measures in a ROD.

3.14.5: Mitigation Measures BIO-10; This project must conform to the California Desert Native Desert Plant Act and the SB County Code, subsection 88.01,050, consistent with BLM policy.

3.14.5: Mitigation Measures BIO-14; This project must conform to the minimum survey and mitigation standards contained in BLM Manual 6840-1.

Page # 3 – FRA’s declaration that not “all construction methods and techniques are known at this time” is a difficult framework for BLM decision making on a right-of-way application. It is difficult submit complete comments on an EIS if the project has not been clearly defined. As the project is further developed, there could be important issues that are not considered.

The lack of documentation of involvement by the USFWS as a key federal agency is critical. Figure 2.1-1: It is very difficult for BLM to determine if issues are adequately addressed when station facilities have not been identified as “proposed”. By not identifying these locations and alternatives, a follow up EIS or EA will be required if the locations are part of a federal agency decision.

Intro and Table 2-5: FRA’s response is not the typical course. The issuance of a DEIS is typically the timeframe to begin Section 7 consultation since their expertise provides analytical information used in the decision making process. BLM will need to have a biological opinion prior to making a decision or signing a record of decision. It is important that the consultation process is started early in the NEPA process. Without a preferred alternative included as part of the DEIS BLM is unsure what alternative USFWS will include in the consultation.

Entire Chapter 2.0: FRA’s approach to maximize “flexibility” has made it difficult to complete the evaluation adequately. BLM cannot comprehensively evaluate differences in impacts based on alternatives when the alternatives have not been clearly defined and a preferred alternative selected.

Chapter 3.0 Various: Review EIS tables for clarification.

3.2-18-19, 3.2.4.2: BLM has submitted a substantive socioeconomic comment concerning losses in visitor-related income and FRA did not address the comments because “none of the other FCA’s provided similar comment or concerns.” These comments need to be addressed appropriately. Additionally, one of the cities along the route has raised such concerns.

The Needles Field Office has the following concerns:

There has not been any documented coordination between First Solar (OptiSolar) and the proponent. A letter was sent to both companies to facilitate the companies working together to determine the level of conflict between the two projects and possible solutions. These discussions need to continue.

There do not appear to be modifications in the DEIS to indicate that the applicant for the solar project, Brightsource (the ISEGS project), and DXE are working together or acknowledge each other’s projects and the potential conflicts.

Although there is a statement that the displacement of the materials derived from excavation of the dual-track, 6,300’ of tunnels will be used as base material for some of the rest of the rail.

There are not any cut/fill computations of the tunnels (of unknown dimensions) for the millions of cubic yards of excavated material or indications of where it is anticipated to be used

It was only recently determined that the proposed action for the train is to operate off overhead electrical lines rather than internal combustion engines (each with their own engines). This means that the tunnel will now need to be much taller than originally planned to accommodate the overhead lines under this alternative. BLM does not yet have a complete description of the location of needed electrical substations or information about the required intervals for substations, any description of the overhead lines, conflicts with other projects using these substations, or the possible impacts to wildlife from the overhead lines or visual impacts from those. In addition, the engineering of the tunnel still needs to be disclosed (i.e. structural reinforcement, hydrologic concerns from percolated rainfall, flood events,). Without any plan of development with engineering, we cannot move forward with analysis.

The document seems to be a programmatic EIS for a conceptual project that lacks the basic vital details needed for a specific project review.

The east end of the Ivanpah Lakebed should be avoided.

1.2.4 Needs larger scale map (11 x 17 minimum) with land ownership status and resources areas indicated.

3.14.5 Mitigation Bio-6: The paragraph that starts "All succulents within the limits of disturbance will relocate" should include California as well as Nevada.

3.14.5 Mitigation Bio-4: When will invasive weed surveys be conducted and what protocol will be used?

General: 5-15-09 Draft route segment 4(c) is not identified in the document.

General: Please include information about the coordination with CalTrans. It is important to determine if the train can operate in the I-15 ROW.

General: There is no discussion of the 1.2 miles of tunnels, size of tunnels, volumes of material; how/where the material would be disposed; transporting material to final destination not mentioned.

General: The document does not identify that coordination with First Solar (OptiSolar) has taken place.

General: The document does not identify that coordination with power supply companies has taken place.

General: The document does not identify that coordination to finalize the Section 4(b) or (c) has taken place.

General: Resource surveys not completed for 4(b) or (c) alignments.

General: Segment 4(b) bisects Ivanpah Dry Lake, and area identified in LUPs disallowing motorized vehicles.

General: No POD was submitted per 43CFR 2804.25. This is needed to flesh out project proposal.

General: Alignment 4(c) goes through State Trust lands. The DEIS does not indicate any coordination with State Lands Commission.

General: Alignment 4(c) is in a utilities corridor not addressed in the document.

General: Per 2804.26(a) (5): Proponent has not demonstrated technical or financial capability to construct the project or operate it.

General: Impacts to Grazing Allotment not addressed

General: T16N, R14E Section 31: There are seven east-west utility ROW's (elect, telephone, pipelines, including water, natural gas, fuels) below in area identified for the route. The possible impacts to the utilities and access to them for maintenance should be addresses in the EIS.

3.7 It would be preferable to split Cultural resources and Paleontological resources into two sections. Please fix typo: "Historic archaeological sites **my** include" to "Historic archaeological sites may include....."

3.7.3 The BLM is requesting that the proponent use the BLM's Potential Fossil Yield Classification [PFYC] system for rating paleontological resources sensitivity.