

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35544

DESERTXPRESS ENTERPRISES, LLC, AND DESERTXPRESS HSR CORPORATION—
CONSTRUCTION AND OPERATION EXEMPTION—IN VICTORVILLE, CAL., AND
LAS VEGAS, NEV.

Digest:¹ This decision grants a request to reopen and authorize construction and operation of a modified alignment of a high-speed passenger rail project subject to environmental mitigation measures.

Decided: November 15, 2023

In 2019, DesertXpress Enterprises, LLC, (DesertXpress)² filed a petition to reopen this proceeding, seeking modification of a 2011 condition concerning the construction of an approximately 190-mile rail line for high-speed passenger rail service between Victorville, Cal., and Las Vegas, Nev. (the LV Line). That condition authorized construction of a designated alignment. DesertXpress seeks authority for modifications to the previously approved alignment.

Environmental review of the modified route had been ongoing and was recently completed. Specifically, the Board's Office of Environmental Analysis (OEA) has worked with the Federal Railroad Administration (FRA), the lead agency on the environmental and historic review for this project under the National Environmental Policy Act (NEPA) and related environmental laws, including Section 106 of the National Historic Preservation Act (NHPA). As part of this process, OEA has reviewed a 2020 reevaluation by FRA (FRA 2020 Reevaluation) of the modified alignment, as well as a subsequent reevaluation by FRA (FRA 2023 Reevaluation) considering further route modifications proposed by DesertXpress in 2022. OEA concludes that FRA adequately assessed the potential environmental and historic impacts associated with the project modifications and concurs with FRA's determination that a

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² On September 17, 2018, DesertXpress' ownership group entered into an agreement to sell the company to Brightline Holdings LLC (Brightline). Fortress Inv. Grp. LLC—Continuance in Control—Cent. Me. & Que. Ry., FD 36225, slip op. at 1-2 (STB served Oct. 11, 2018). Brightline's acquisition of DesertXpress was consummated on March 4, 2019. (Pet. to Reopen 4.)

Supplemental Environmental Impact Statement (EIS) is not necessary. OEA also recommends that the Board impose the revised mitigation measures in Appendix D of the FRA 2023 Reevaluation. Historic review of the project modifications had also been ongoing and was completed this year. A Programmatic Agreement (PA) setting out the final terms for compliance with Section 106 was executed on August 15, 2023.

As discussed below, the Board will reopen this proceeding and grant DesertXpress' petition for exemption seeking authority for the modified alignment. The Board will also adopt FRA's 2020 and 2023 Reevaluations and impose the environmental mitigation measures listed in Appendix D of the FRA 2023 Reevaluation.

BACKGROUND

On July 28, 2011, DesertXpress and its wholly owned subsidiary, DesertXpress HSR Corporation (collectively, DXE), filed a petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 10901 to construct and operate the LV Line. FRA, with OEA's participation as a cooperating agency, conducted an environmental review of the proposed project by preparing an EIS.³ Following an examination of the entire record on both the transportation merits and potential environmental impacts, the Board granted the petition for a construction and operation exemption, subject to environmental conditions and the condition that DXE construct the 2011 Selected Alternative. See DesertXpress Enters.—Constr. & Operation Exemption—in Victorville, Cal., & Las Vegas, Nev. (October 2011 Decision), FD 35544, slip op. at 8 (STB served Oct. 25, 2011).⁴

On March 27, 2019, DesertXpress filed a petition to reopen this proceeding, seeking modification of the condition authorizing construction of the 2011 Selected Alternative to permit the LV Line to be constructed along a modified route, referred to as the "I-15 median" alignment. (Pet. to Reopen 1, 5.) DesertXpress stated that it had determined that it would be more efficient to construct the LV Line primarily in the median between the northbound and southbound lanes of the I-15 freeway and to utilize a single-track configuration with passing sidings. (Id. at 5.)

In a notice served on June 24, 2019, the Director of the Board's Office of Proceedings (Director) explained that FRA had agreed to reevaluate the environmental analysis relied upon by the Board in the October 2011 Decision in light of the alignment changes proposed by DesertXpress and that OEA would participate in that process as a cooperating agency. See DesertXpress Enters.—Constr. & Operation Exemption—in Victorville, Cal., & Las Vegas, Nev., FD 35544, slip op. at 2 (STB served June 24, 2019). The Director added that the petition

³ On July 8, 2011, FRA published its Record of Decision (ROD) approving the environmentally preferred alternative for the route, facilities, and technology (2011 Selected Alternative), subject to mitigation measures to avoid or minimize potential adverse environmental impacts. (See Pet. for Exemption, Ex. D.)

⁴ The 2011 Selected Alternative contemplated a double-track rail line to be located almost entirely on the north/west side of the I-15 freeway travel lanes. (DesertXpress Letter 1, Sept. 15, 2020; Pet. for Exemption, Ex. D, 34-35, 63-64.)

to reopen would be addressed after the FRA 2020 Reevaluation was completed. DesertXpress Enters.—Constr. & Operation Exemption—in Victorville, Cal., & Las Vegas, Nev., FD 35544, slip op. at 2 (STB served June 24, 2019).

On September 15, 2020, DesertXpress filed a letter stating that FRA had completed the FRA 2020 Reevaluation⁵ and concluded that a Supplemental EIS was not required for the proposed modifications to the alignment. (DesertXpress Letter 2, Sept. 15, 2020.) DesertXpress also asserted that “[t]he Board need not revisit the [October 2011 Decision’s] findings with respect to the transportation merits of the Line,” as “[n]one of those findings would be affected by substituting the modified I-15 median alignment for the side-running alignment previously designated by FRA.” (DesertXpress Letter 2 n.4, Sept. 15, 2020.) Accordingly, DesertXpress asked the Board to grant its petition to reopen the October 2011 Decision to revise the routing condition to authorize it to build the modified alignment and project design specified in the FRA 2020 Reevaluation. (DesertXpress Letter 3, Sept. 5, 2020.)⁶

OEA then prepared an Environmental Memorandum (OEA 2020 Memo) concurring with the conclusions reached in the FRA 2020 Reevaluation. The Board also recommended that the Board consider FRA’s 2020 Reevaluation, along with the EIS, when determining whether to authorize the LV Line as modified, and that it impose revised mitigation measures recommended by FRA in the FRA 2020 Reevaluation. OEA 2020 Memo 2. OEA further explained that FRA was working with appropriate consulting parties to complete the historic review under Section 106. Id.

The Board provided an opportunity for the public to comment in a decision served on December 3, 2020. See DesertXpress Enters.—Constr. & Operation Exemption—in Victorville, Cal., & Las Vegas, Nev., FD 35544 (STB served Dec. 3, 2020). The Board did not receive any comments. In that decision, the Board also noted that review of historic and cultural resources was ongoing pursuant to Section 106 and that it could not issue a final decision modifying the routing condition, if appropriate, until that process was complete.

In 2022, DesertXpress proposed additional modifications, which were developed through the final design phase for the LV Line. DesertXpress’ further modifications include, among other things, moving “additional miles of track along the Las Vegas-Victorville route (as well as the Victor Valley station building) into the median between the northbound and southbound lanes” of the I-15 freeway, relocating certain facilities, and adding temporary construction areas. (DesertXpress Letter 2, Sept. 19, 2023.) It asks the Board to modify the routing condition again to reflect those modifications. (Id. at 3.) After evaluating these additional modifications, FRA

⁵ The FRA 2020 Reevaluation is available on FRA’s website at <https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/brightline-west-las-vegas-victor-valley>.

⁶ In addition to locating the LV Line primarily within the I-15 freeway median, the modified alignment would also relocate the LV Line’s southern terminus in Victor Valley from the City of Victorville to the Town of Apple Valley. (FRA 2020 Reevaluation, Summary 1 n1.)

issued the 2023 FRA Reevaluation,⁷ concluding that a Supplemental EIS is not necessary and updating the mitigation measures. OEA then prepared the OEA 2023 Environmental Memorandum (OEA 2023 Memo) (appended to this decision) concurring with FRA’s conclusions and recommending that the Board consider FRA’s 2023 Reevaluation, along with the 2020 Reevaluation and the EIS, in deciding whether to authorize the LV Line as modified, and that it impose the updated mitigation measures contained in Appendix D of the FRA 2023 Reevaluation. OEA 2023 Memo 5. As noted above, a PA was executed on August 15, 2023, completing the Section 106 historic review process for this proceeding.

DISCUSSION AND CONCLUSIONS

Reopening the Proceeding.

A party may seek to reopen a Board proceeding by submitting a petition that (1) presents new evidence or substantially changed circumstances that would materially affect the case or (2) demonstrates material error in a prior decision. 49 U.S.C. 1322(c); 49 CFR 1115.4. “To warrant reopening, the new evidence must be newly available, and the new evidence or substantially changed circumstances must materially affect the prior decision.” Port of Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936, slip op. at 2 (STB served Jan. 28, 2019) citing Riffin—Pet. for Declaratory Ord., FD 34997 et al., slip op. at 6 (STB served, Oct. 29, 2012).

Here, DesertXpress has proposed to construct the LV Line along a modified alignment somewhat different from that which the Board authorized in the October 2011 Decision. The modifications led to the 2020 and 2023 FRA Reevaluations and the updated mitigation measures in Appendix D of the 2023 FRA Reevaluation. These developments constitute new evidence and changed circumstances that warrant reopening the October 2011 Decision to consider the modified alignment and revised mitigation.

Rail Transportation Analysis.

The construction of new railroad lines requires prior Board authorization, through either a certificate under § 10901 or, as requested here, an exemption under § 10502 from the prior approval requirements of § 10901. Section 10901(c) directs the Board to grant authority for rail line construction proposals unless it finds the proposal “inconsistent with the public convenience and necessity.” See Alaska R.R.—Constr. & Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), aff’d sub nom. Alaska Survival v. STB, 705 F.3d 1073 (9th Cir. 2013). Under § 10502(a), the Board shall, to the maximum extent permissible, exempt a proposed rail line construction from the prior approval requirements of § 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 and (2) either (a) the proposal is of limited scope or (b) the full application procedures are not needed to protect shippers from an abuse of market power.

⁷ The FRA 2023 Reevaluation is also available on FRA’s website at <https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/brightline-west-las-vegas-victor-valley>.

In the October 2011 Decision, the Board concluded that DesertXpress met the standards of § 10502 for an exemption to construct and operate the LV Line. The Board found that the LV Line would provide additional transportation options and alleviate both automobile congestion on the I-15 freeway as well as constraints on the expansion of air travel in Southern California. See Oct. 2011 Decision, FD 35544, slip op. at 3. The Board further found that the LV Line would reduce air pollution and overall fuel consumption and noted the expected multi-billion-dollar beneficial impact on the economies of Nevada and California. See id. at 2 n.4 & 3 (referencing forecasts of LV Line ridership and automobile diversions, jobs, and economic impacts). The Board concluded that the requested exemption would reduce the need for federal regulation (49 U.S.C. 10101(2)), ensure the development of a sound rail transportation system with effective competition to meet the needs of the shipping public (49 U.S.C. 10101(4)), foster sound economic conditions in transportation (49 U.S.C. 10101(5)), reduce regulatory barriers to entry (49 U.S.C. 10101(7)), and promote energy conservation and reduce congestion consistent with 49 U.S.C. 10101(14). See Oct. 2011 Decision, FD 35544, slip op. at 3-4. The Board also found that other aspects of the rail transportation policy would not be affected. Finally, the Board found that regulation of the proposed construction is not necessary to protect shippers from the abuse of market power. Id.

No party challenged in this proceeding the Board's 2011 conclusions on the transportation merits of the proposal,⁸ and nothing in the record developed since then, including the environmental analysis discussed in the next section, calls those conclusions into question. The LV Line, with a modified median alignment, would reduce highway congestion by diverting vehicle traffic from the I-15 freeway to a faster and more efficient rail option. As previously noted, diversions would also benefit the environment, in part due to the far lower emissions associated with rail. (See also Titus Letter 2, July 27, 2023 (“Estimates show that over 700 million vehicle miles traveled will be removed annually from the highway which will eliminate more than 400,000 tons of CO2 emissions from the atmosphere.”).) And, as previously noted, construction of the LV Line is anticipated to generate billions of dollars in economic activity and tax revenue, and lead to the creation of thousands of jobs. (See also id. at 1-2.) Simply put, the benefits to the traveling public and, ultimately, the environment of adding a high-speed passenger rail option between Southern California and Las Vegas are considerable, and the project modifications do not change this conclusion. Moreover, the merits are enhanced by the Victor Valley-to-Rancho Cucamonga extension (RC Line), which would connect passengers on the LV Line to the Southern California commuter rail network.⁹ The Board therefore reaffirms its 2011 conclusions regarding the transportation merits of the LV Line.

⁸ See note 10, infra.

⁹ In Docket No. FD 36488, DesertXpress filed a petition for exemption to construct and operate the RC Line, an approximately 50-mile high-speed passenger rail line, between the Victor Valley and Rancho Cucamonga in Southern California. The RC Line would connect with the southern terminal of the LV Line at the Victor Valley. The Board instituted a proceeding in Docket No. FD 36488 on July 12, 2021. DesertXpress Enters.—Constr. & Operation Exemption—Passenger Rail Line Between Victor Valley & Rancho Cucamonga, Cal., FD 36488 (STB served July 12, 2021). The Board issued a decision today authorizing DesertXpress to construct and operate the RC Line.

Environmental Analysis.

NEPA requires that the Board examine the environmental effects of proposed federal actions and inform the public concerning those effects. Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, 462 U.S. 87, 97 (1983). Under NEPA, the Board must consider potential beneficial and adverse environmental effects in reaching its decision. The two-fold purpose of NEPA is to ensure that the agency’s decision-making process includes environmental considerations and to inform the public about those considerations. Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144, 1151 (D.C. Cir. 2001). While NEPA prescribes the process that must be followed, it does not mandate a particular result. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350-51 (1989). Thus, once the adverse environmental effects of a proposed action have been adequately identified and evaluated, the Board may conclude that “other values outweigh the environmental costs.” Id.

The FRA 2020 Reevaluation reassessed the project modifications alongside the proposed action described in the EIS and ROD. OEA 2020 Memo 3. FRA also updated and revised certain mitigation measures developed in the EIS to address changes in the affected environment and project changes since publication of the EIS. OEA 2020 Memo 3. FRA determined that, with mitigation, the project modifications would result in similar impacts to those evaluated in the EIS and concluded that the project modifications would reduce certain environmental impacts of the LV Line. OEA 2020 Memo 3. For example, the modified alignment assessed in the FRA 2020 Reevaluation, which would be single track and primarily in an existing median, would reduce the project’s impact on land use, visual resources, air quality and climate change, and biological resources. Id. at 5, 7, 10, 12.

As part of FRA’s review, it also identified regulatory changes that had taken effect since the issuance of the EIS and analyzed the affected environment to ensure that the conclusions of the EIS remained valid. OEA 2020 Memo 3. Based on the analysis and findings in the FRA 2020 Reevaluation, FRA concluded that the project modifications, with the implementation of the proposed mitigation, did not constitute changes to the proposed action that would result in significant environmental impacts that were not evaluated in the EIS and that a Supplemental EIS was not necessary. Id.

OEA concluded that FRA had adequately assessed the potential environmental impacts associated with the project modifications and concurred with FRA’s determination that a Supplemental EIS was not necessary. OEA 2020 Memo 13. Accordingly, OEA recommended that the Board consider the FRA 2020 Reevaluation, along with the EIS, in deciding whether to authorize the project as modified. OEA 2020 Memo 13-14. OEA also recommended that the Board impose the revised mitigation measures recommended in the FRA 2020 Reevaluation. OEA 2020 Memo 14. As noted above, the Board provided an opportunity for public comment, and no comments were filed.¹⁰

¹⁰ In response to DesertXpress’ petition for exemption to construct and operate the RC Line, see note 9, supra, the San Manuel Band of Mission Indians (San Manuel Band, now the Yuhaaviatam of San Manuel Nation) and Morongo Band of Mission Indians (Morongo Band),

Likewise, in the FRA 2023 Reevaluation, FRA determined that (1) the additional modifications proposed by DesertXpress in 2022, with the imposition of final proposed mitigation, would not result in substantial changes in the evaluation of impacts disclosed in the EIS or the FRA 2020 Reevaluation and (2) no Supplemental EIS is required. OEA 2023 Memo 4. FRA also determined that the modifications would generally avoid or minimize the overall effects of the project. Id. For example, FRA concluded that placement of additional components of the rail alignment and a greater portion of ancillary facilities within the I-15 freeway right-of-way would reduce biological resource impacts compared to the EIS or the FRA 2020 Reevaluation. OEA 2023 Memo 4 n.7. Similarly, constructing along the modified route would result in fewer air emissions compared to the route examined in the EIS because there would be no tunneling and less of a need to elevate the alignment. Id.

OEA further concluded that the FRA 2023 Reevaluation adequately assessed the potential environmental impacts associated with DesertXpress' additional modifications and concurred with FRA's determination that a Supplemental EIS is not necessary. OEA 2023 Memo 5. Accordingly, OEA recommends that the Board consider the FRA 2023 Reevaluation, along with the FRA 2020 Reevaluation and the EIS, when it decides whether to authorize the LV Line as modified. OEA 2023 Memo 5. OEA also recommends that, in any decision granting an exemption for construction and operation of the LV Line modified as described in the FRA 2020 and 2023 Reevaluations, the Board should impose all the mitigation measures included in Appendix D of the FRA 2023 Reevaluation. OEA 2023 Memo 5.

NHPA.

Section 106 of NHPA requires federal agencies to “take into account the effect of” their licensing decisions (in this case, whether to grant DesertXpress' request to modify the LV Line

filed comments challenging the sufficiency of FRA's historic review process with respect to the modified alignment of the LV Line. (San Manuel Band Comments 1-2, FD 36488, May 5, 2021; Morongo Band Comments 1-2, FD 36488, June 4, 2021). Since those comments were filed, a new PA has been executed between (among others) FRA, STB, the California State Historic Preservation Office (SHPO), the Nevada SHPO, and the Advisory Council on Historic Preservation (ACHP). See note 11, infra. Execution of the PA satisfies the requirements of Section 106 for the modified route of the LV Line.

Also in the docket for the RC Line, the National Parks Conservation Association (NPCA) filed a comment suggesting that the LV Line was not adequately assessed under NEPA. (NPCA Comments 1, FD 36488 June 8, 2021.) NPCA further argued that the LV Line should have been considered simultaneously with the RC Line because, according to NPCA, “there is no viable project” absent the RC Line. (Id.) The Board disagrees. As explained above, both the LV Line's and RC Line's environmental and historic impacts have been thoroughly evaluated under NEPA and NHPA. And, as the Board found in 2011, the LV Line has considerable merit—including ridership demand—even without the RC Line. See Oct. 2011 Decision, FD 35544, slip op. at 2-3.

alignment) on properties included in, or eligible for inclusion in, the National Register of Historic Places and, prior to the approval of an undertaking, to afford ACHP a reasonable opportunity to comment. See 54 U.S.C. 306108. Consultation with the SHPO is also required. See 36 CFR§ 800.2(a)(4) & (c)(1), 800.3(c)(3).

FRA determined that the project modifications would not result in substantial changes to the evaluation of cultural resource impacts from those identified in the EIS. OEA 2020 Memo 8. However, FRA concluded that the modified project would encounter new archaeological resources and historic built environment resources that were not previously evaluated. OEA 2020 Memo 8. In accordance with 36 CFR part 800, FRA moved the Section 106 process forward in consultation with the appropriate parties, including ACHP, the California and Nevada SHPOs, and federally recognized Native American tribes with an interest in the project area. OEA 2020 Memo 8. In response to requests from several consulting parties after FRA completed the FRA 2020 Reevaluation, FRA decided to resolve any adverse effects to historic archeological and built environment resources through the execution of a new PA. OEA 2020 Memo 8-9.

As noted in the PA executed on August 15, 2023, FRA identified 197 historic properties, assessed the adverse effects to those properties, and prepared a Historic Properties Treatment Plan that provides detailed methodology for implementing mitigation prescribed by the agreement and resolves adverse effects to all known historic properties. (2023 PA 6, 20.)¹¹ OEA concludes, and the Board agrees, that execution of the PA satisfies the requirements of Section 106 for the modified route. OEA 2023 Memo 4.

The Board’s Analysis of the Environmental Issues.

The Board will adopt the analyses and conclusions in the FRA 2020 and 2023 Reevaluations. The Board will also impose the final recommended mitigation measures listed in Appendix D of the FRA 2023 Reevaluation, which would lessen impacts from constructing and operating the modified alignment. The Board is satisfied that the FRA 2020 and 2023 Reevaluations took the requisite “hard look” at the potential environmental and historic impacts associated with modifications to the LV Line and properly determined that, with the mitigation in Appendix D of FRA’s 2023 Reevaluation, the proposed modifications would not have potentially significant environmental impacts, and that preparation of a Supplemental EIS is unnecessary.

¹¹ The PA is available on FRA’s website at <https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/brightline-west-las-vegas-victor-valley>.

Conclusions.

The Board already authorized construction and operation of the LV Line by exemption in 2011, and the modified alignment would lessen or avoid a number of potential environmental impacts by placing much of the routing in the I-15 median. As noted above, the merits of a high-speed rail passenger line connecting Las Vegas and Southern California are substantial, and are strengthened by the RC Line and its connection to the greater Southern California commuter rail network. Moreover, providing a rail alternative along the I-15 corridor would not only create a transportation benefit for passengers; it would also create environmental benefits in replacing highway vehicle traffic, and its associated emissions, with more environmentally-friendly rail travel. Therefore, after considering the transportation merits, the environmental issues, and the entire record, the Board will grant the petition for exemption and authorize the modified alignment of the LV Line by modifying the 2011 routing condition, subject to compliance with the mitigation measures listed in Appendix D of the FRA 2023 Reevaluation.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. DesertXpress' petition to reopen and modify the 2011 routing condition is granted.
2. Under 49 U.S.C. 10502, the Board exempts construction of the LV Line from the prior approval requirements of 49 U.S.C. 10901, with the modifications evaluated in the FRA 2020 and 2023 Reevaluations.
3. The Board adopts the environmental mitigation measures set forth in Appendix D of the FRA 2023 Reevaluation and imposes them as conditions to the exemption granted here.
4. Notice will be published in the Federal Register.
5. Petitions for reconsideration must be filed by December 6, 2023.
6. This decision is effective December 16, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Appendix



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

MEMORANDUM

TO: Martin Oberman, Chairman
Karen Hedlund, Vice Chairman
Patrick Fuchs, Member
Michelle Schultz, Member
Robert Primus, Member

Cc: Mai Dinh
Director, Office of Proceedings

FROM: Danielle Gosselin
Director, Office of Environmental Analysis

DATE: October 30, 2023

SUBJECT: Docket No. FD 35544, DesertXpress Enterprises, LLC and DesertXpress HSR Corporation—Construction and Operation Exemption—in Victorville, Cal. and Las Vegas, Nev.: **Environmental Memorandum**

This memorandum summarizes a second reevaluation undertaken by the Federal Railroad Administration (FRA) in 2023 (2023 Reevaluation) of additional proposed project modifications to DesertXpress Enterprises, LLC's, d/b/a Brightline West (the Applicant), construction and operation of a high-speed passenger rail line between Southern California and Las Vegas, Nevada. This memorandum also presents the Office of Environmental Analysis' (OEA) final recommendations to the Board based on FRA's 2023 Reevaluation, including a recommendation that the Board impose the revised environmental mitigation in FRA's 2023 Reevaluation in any decision authorizing the project, as modified.

INTRODUCTION

On July 28, 2011, the Applicant submitted a petition for exemption under 49 U.S.C. § 10502 for the construction and operation of an approximately 190-mile high-speed passenger rail line between the Victor Valley, in Southern California, and Las Vegas, Nevada (Line). The purpose of the Line was to create an alternative transportation option (in addition to auto and air) from Southern California to Las Vegas. The Applicant plans to provide passenger rail service on the Line.

The Board, through OEA, participated in the environmental review as a cooperating agency under the lead of FRA.¹ A number of other agencies, including the Bureau of Land Management (BLM), the Federal Highway Administration, the National Park Service, the California Department of Transportation (Caltrans), and the Nevada Department of Transportation (NDOT), participated in the environmental review process as cooperating agencies or consulting parties. FRA, with the assistance of the cooperating agencies, prepared a Draft Environmental Impact Statement (Draft EIS) in March 2009, a Supplemental Draft EIS in August 2010, and a Final Environmental Impact Statement (Final EIS) in March 2011.²

The EIS identified a preferred alternative and developed environmental mitigation conditions to avoid or minimize potential environmental impacts. Following the issuance of a Record of Decision (ROD) by FRA, the Board, on October 20, 2011, granted the Applicant's petition for exemption, subject to environmental conditions and the condition that the Applicant build the route designated in the EIS and ROD as environmentally preferable (2011 Decision).³ Despite having the requisite agency approvals to construct and operate the Line, construction did not immediately proceed.

In 2018, the Applicant proposed design modifications to the Line, including modifying the rail alignment between the Victor Valley and Las Vegas so that it was located primarily within the I-15 freeway median with portions following the east side of the I-15 freeway; relocating the Southern California terminus from Victorville to the Town of Apple Valley (both located in the Victor Valley); collocating an operations maintenance storage facility with the passenger station in Apple Valley; and constructing certain ancillary facilities not previously evaluated in the EIS.

FRA prepared a written reevaluation⁴ of the design modifications (2020 Reevaluation), in which it determined that the project modifications would reduce certain environmental impacts; updated and revised some mitigation measures developed in the EIS to address changes in the affected environment and project modifications since publication of the EIS; and concluded that a Supplemental EIS was not required and that the proposed project modifications are consistent with the proposed action described in

¹ FRA was the lead agency in the environmental review because of its jurisdiction and expertise related to high-speed train operations and railroad safety. See DesertXpress Enters., LLC & DesertXpress HSR Corp.—Constr. & Operation Exemption—in Victorville, Cal. & Las Vegas, Nev., Docket No. FD 35544, slip op. at 4 n.6 (STB served Oct. 25, 2011).

² The DEIS, Supplemental DEIS, and FEIS are referred to collectively as the EIS.

³ See 2011 Decision at 1, 8.

⁴ FRA's Procedures for Considering Environmental Impacts (64 Fed. Reg. 28545, May 26, 1999), provide that if major steps toward implementation of the proposed action have not occurred within the time frame, if any, set forth in the Final EIS, or within five years from the date of approval of the Final EIS, a written reevaluation of the adequacy, accuracy, and validity of the Final EIS is prepared, to determine if a new or supplemental EIS is necessary.

FRA's EIS and ROD. The Board, through OEA, participated as a cooperating agency in FRA's reevaluation process.

On March 27, 2019, the Applicant filed a petition with the Board to reopen this proceeding, seeking modification to the condition in the 2011 Decision authorizing construction of the Line along the previously selected preferred alternative route due to the Applicant's proposed design modifications and other changes. OEA prepared an Environmental Memorandum to the Board agreeing with FRA's conclusions in the 2020 Reevaluation that no Supplemental EIS was required, and recommending that, in any decision approving the proposed project, the Board impose the revised mitigation measures in FRA's 2020 Reevaluation. The Board then issued a decision on December 3, 2020 attaching the OEA memorandum, seeking public comment, and noting that the review of historic and cultural resources pursuant to Section 106 of the National Historic Preservation Act was still ongoing and that, therefore, the Board could not issue a final decision addressing the modified route and other changes until that process was complete. No comments were received.

FRA'S 2023 REEVALUATION

In 2022, the Applicant proposed additional modifications, which were developed through the final design phase for the Line. These modifications included relocating the rail alignment on certain portions of the Line from the east side of the I-15 freeway to the median; revising the design of the Apple Valley station to include the passenger boarding and alighting platforms in the median of the I-15 freeway; raising and moving east a portion of the existing I-15 northbound lanes to provide the necessary footprint and access for these passenger platforms; adding or modifying certain ancillary features not previously evaluated in the EIS or 2020 Reevaluation, such as highway ramps, state highway patrol emergency crossovers, and culverts; and locating a vehicle maintenance facility and connecting freight track corridor at a site that had not previously been evaluated in Sloan, Nevada (Sloan VMF). A detailed table from the 2023 Reevaluation describing all of the additional modifications is attached to this memorandum.

FRA evaluated the additional modifications and issued a memorandum on September 15, 2023, concluding that a Supplemental EIS is not necessary. The 2023 Reevaluation focused on the modifications to the project footprint and facilities proposed since the issuance of FRA's 2020 Reevaluation, and also reflected changes since then to the affected environment, regulatory setting, and project effects. FRA reassessed each of the environmental resource areas analyzed in the EIS and 2020 Reevaluation: land use, community, and environmental justice communities; growth; farmlands and grazing lands; utilities/emergency services; traffic and transportation; visual resources; cultural resources; hydrology and water quality; geology and soils; paleontological resources; hazardous materials; air quality and global climate change; noise and vibration; energy;

biological resources⁵; and cumulative impacts.⁶ FRA determined that the additional modifications, with the imposition of final proposed mitigation (including, in most cases, mitigation that had already been proposed in the EIS and 2020 Reevaluation), would not result in substantial changes in the evaluation of impacts disclosed in the EIS or 2020 Reevaluation, that the modifications would generally avoid or minimize the overall effects of the project, and that no Supplemental EIS is required.⁷

MITIGATION MEASURES

FRA has updated the mitigation measures included in the 2011 ROD and the 2020 Reevaluation to account for the additional project modifications, and principally to mitigate impacts on the desert tortoise and the desert tortoise habitat from the Sloan VMF footprint. The mitigation measures are described in detail in Attachment D of the 2023 Reevaluation.⁸ The 2023 Reevaluation concludes that the mitigation measures developed

⁵ FRA reinitiated consultation with the U.S. Fish and Wildlife Service (USFWS), under Section 7 of the Endangered Species Act for the additional modifications. USFWS recommended updates to the mitigation measures described in the project's Biological Opinion prepared in 2011, specifically mitigation for impacts from the Sloan VMF on the desert tortoise and desert tortoise habitat. FRA incorporated the revised mitigation measures into the 2023 Reevaluation. On September 1, 2023, USFWS concluded re-initiation of Section 7 consultation and determined that formal consultation was not required for the Line.

⁶ With the exception of biological resources and cultural resources, FRA performed a desktop/qualitative evaluation for the above-listed resources as changes to the affected environment for those resources would be unlikely to occur or were easily assessed using publicly available resources. FRA performed more detailed evaluations to assess impacts to cultural resources and biological resources, which it documented in technical reports/memoranda. To facilitate review by BLM, FRA included a separate analysis for the Sloan VMF in the 2023 Reevaluation because the Sloan VMF has been proposed on land owned and managed by BLM. FRA's determination as to whether a Supplemental EIS is required considered all project modifications, including the Sloan VMF.

⁷ For example, FRA concluded that placement of additional components of the rail alignment and a greater portion of ancillary facilities within the I-15 freeway right-of-way would reduce biological resource impacts compared to the EIS or the FRA 2020 Reevaluation. (FRA 2023 Reevaluation 51-54.) Similarly, constructing along the modified route would result in fewer air emissions compared to the route examined in the EIS because there would be no tunneling and less of a need to elevate the alignment. (*Id.* at 45.)

⁸ The 2023 Reevaluation, including its attachments, is available on FRA's website at <https://railroads.dot.gov/rail-network-development/environment/environmental-reviews/brightline-west-las-vegas-victor-valley>.

in the EIS and the 2020 Reevaluation, as updated in the 2023 Reevaluation, would avoid or minimize potential environmental impacts and that no Supplemental EIS is required.

SECTION 106 PROCESS

A Programmatic Agreement (PA) to govern the approach for ongoing compliance with Section 106 and implementation of the resolution of adverse effects was executed on August 15, 2023. This completed the Section 106 process for the proceeding.

OEA'S FINAL ENVIRONMENTAL RECOMMENDATIONS

After participating in the reevaluation process and reviewing FRA's 2023 Reevaluation, OEA concludes that the 2023 Reevaluation adequately assesses the potential environmental impacts associated with the Applicant's additional modifications and concurs with FRA's determination that a Supplemental EIS is not necessary. Accordingly, OEA recommends that the Board consider FRA's 2023 Reevaluation, along with the 2020 Reevaluation and the EIS, when it decides whether to authorize the Line as modified. Mitigation measures imposed in FRA's ROD and the Board's prior decision, and refined in the 2020 Reevaluation, were further refined in the 2023 Reevaluation. Therefore, OEA recommends that, in any decision approving the Line as modified in the 2020 and 2023 Reevaluations, the Board impose all the mitigation measures included in Appendix D of the 2023 Reevaluation.

ATTACHMENT

Project Modifications (since the September 2020 Reevaluation)⁹

PROJECT FEATURE	DESCRIPTION OF MODIFICATION
Segment 1 Alignment (Apple Valley to Lenwood)	<p>The Project modifications involve relocating the rail alignment between the Victor Valley Station and Sidewinder Road from east side of the I-15 freeway to the median. As such, the entirety of the Segment 1 rail alignment is now within the I-15 freeway median, which would result in reduced impacts and increase the efficiency of train operations. This design change is also favorable with Caltrans and FHWA as it would improve constructability of potential future I-15 freeway improvements in either the northbound or southbound directions. Additionally, the Segment 1 rail alignment would be extended less than one mile south of the Victor Valley Station to access a maintenance of way track that will be constructed to move equipment from the median rail mainline to the maintenance of way facility. Construction of a median-running rail alignment in this area, south of the Dale Evans Parkway intersection, would require realignment of the existing I-15 northbound travel lanes approximately 50 feet east, and reconstruction of the Dale Evans Parkway interchange including the overpass.¹⁰ This is discussed further under the Victor Valley Station description below. Additionally, the I-15 northbound travel lanes would be elevated approximately 25 feet south of the interchange to allow the maintenance of way track to pass from the median to the maintenance of way facility. All roadway work would occur within existing Caltrans/NDOT ROW.</p>
SEGMENT 5 ALIGNMENT (PRIMM TO SLOAN ROAD)	<p>Project modifications would relocate the rail alignment, between Primm and north of Goodsprings Road near Jean, from the east side of the I-15 freeway to the freeway median. As such, the entirety of the Segment 5 rail alignment is now located within the I-15 freeway median, which would result in reduced impacts, increase the safety and efficiency of train operations, and</p>

⁹ Brightline West Victor Valley, CA to Las Vegas, NV High-Speed Rail Project Reevaluation (September 15, 2023) pgs. 4-7.

¹⁰ This Reevaluation has assumed full reconstruction and replacement of the overpass. Caltrans will determine the necessary modifications to the I-15/Dale Evans interchange which may not include full reconstruction and replacement of the overpass.

<p>VICTOR VALLEY STATION (PREVIOUSLY REFERRED TO AS DALE EVANS STATION)</p>	<p>improve constructability for future I-15 widening in this portion of the alignment. Additionally, the previously considered Braid Structures near Primm and the Union Pacific Railroad (UPRR) crossing are no longer needed and have been removed.</p> <p>The Project design evaluated in September 2020 considered collocating an operations, maintenance, and storage facility (OMSF) with the Victor Valley Station, with a permanent footprint of approximately 300 acres. As discussed below, the current Project modifications include a relocation of the Vehicle Maintenance Facility (VMF) to a site on the west side of I-15 in Sloan. The Victor Valley Station permanent footprint would remain unchanged. As noted above, under Segment 1, the Project Modifications include relocating the rail alignment into the median of the I-15 freeway. To accommodate this new rail alignment, the Victor Valley Station layout has been revised to include the passenger boarding and alighting platforms in the median of the I-15 freeway. In order to provide the necessary footprint and access for these platforms, the existing I-15 northbound lanes would be raised and moved east within the Caltrans ROW south of the Dale Evans Parkway interchange. Passengers would access station platforms using a walkway underneath the relocated I-15 freeway northbound lanes</p>
<p>HIGHWAY RAMP REALIGNMENTS/MODIFICATIONS</p>	<p>The Project design evaluated in September 2020 included realignment of portions of approximately 17 existing freeway on and off- ramps to accommodate the rail line within the I-15 freeway ROW. The current Project modifications include extending these on and off ramp realignments and ramp modifications and changing the location where these ramp realignment/reconstructions transition to the existing roadway/pavement. There are locations where these proposed freeway ramp modifications occur (from south to north):</p> <ul style="list-style-type: none"> • • The I-15 southbound ramps at Dale Evans Parkway • The I-15 northbound ramps at Main Street in Barstow • The I-15 northbound ramps and southbound ramps at East Primm Boulevard • The I-15 southbound ramps at Goodsprings Road • The I-15 southbound ramps at Sloan Road

	<p>These modifications would be located primarily on previously evaluated Project footprint within existing Caltrans/NDOT, and local ROW along the I-15 freeway. These modifications are the result of coordination with Caltrans and NDOT on final design details, in order to update the modified median-running alignment to adhere to current safety design standards.</p>
<p>CALIFORNIA HIGHWAY PATROL (CHP) EMERGENCY CROSSOVERS</p>	<p>The Project design evaluated in September 2020 included eight emergency crossovers along the alignment in California. The current Project modifications include two new emergency crossovers at Zzyzx Road and Halloran Springs. Additionally, five previously evaluated emergency crossovers in Segment 3 would be relocated. These are located near Coyote Lake Road, Basin Road, Baker, and both north and south of Halloran Springs. Emergency crossovers would be located mainly on previously evaluated Project footprint within the existing Caltrans ROW. In total, the modified Project would include 10 emergency crossovers in California, located in Segment 3 between Yermo and Mountain Pass, and one emergency crossover in Nevada approximately 1.5-miles south of Sloan.</p>
<p>ROADWORK</p>	<p>The Project design evaluated in September 2020 included roadwork at local interchanges and along the I-15 freeway at various locations. The current Project modifications include:</p> <ul style="list-style-type: none"> • Realigning the I-15 freeway northbound lane approximately 50 feet east and raising the lane approximately 25 feet, to accommodate the passenger platforms in the I-15 median, tail track for train storage, a pedestrian underpass for access to/from the platforms, and a maintenance of way access track for trains. These roadwork improvements would occur along a 60-foot portion of the I-15 freeway northbound lane adjacent to the Victor Valley Station. • Additional roadwork at the Dale Evans Parkway interchange accessing the I-15 freeway southbound ramps. • I-15 freeway median widening at Segment 5 to accommodate the modified median-running alignment. • Raising of I-15 southbound lanes just south of the Sloan Road interchange to allow for tracks to exit the I-15 median under the southbound lanes and into the Sloan VMF site.

	<p>The Project modifications also include small, on-road lane realignments along the I-15 freeway at Segment 6, near Silverado Ranch Boulevard and Blue Diamond Road.</p>
<p>CULVERTS</p>	<p>The Project design evaluated in September 2020 included drainage and culvert work throughout the Project limits. The current Project modifications include revised designs for three culverts and the addition of four culverts within Segment 5. The associated drainage and grading activities have also been modified accordingly.</p>
<p>CEMEX FACILITY AND RAIL CONNECTION</p>	<p>A new connection to the existing Cemex industrial rail track is proposed on the north side of Apple Valley, CA near the proposed Victor Valley Station. The connection would consist of a turnout off the existing Cemex track and approximately 2 miles of new track along the east side of I-15 freeway heading north, all within the Caltrans ROW limit. This connection would allow rail transportation of construction materials such as track ballast to the Project area. This reduces the need for trucking construction materials to the Project area.</p>
<p>IVANPAH TRACTION POWER SUBSTATION (TPSS)</p>	<p>The Ivanpah modified TPSS 3-mile utility line and 3.5-mile redundant utility line would travel north of the existing solar field to connect to a Southern California Edison (SCE) substation adjacent to the BrightSource Ivanpah Electrical Generating System, west of the I-15 freeway, resulting in the reduction of approximately 0.18 acres of permanent footprint. These modifications are the result of coordination with SCE, BLM and USFWS.</p>
<p>CALIFORNIA MAINTENANCE OF WAY (MOW) FACILITY</p>	<p>The Project design evaluated in September 2020 considered the relocation of the California MOW Facility from Baker, California, to the I-15 freeway median approximately six miles south of the California/Nevada state line, adjacent to the existing California Agricultural Inspection Station (CAIS). The 25-acre facility was proposed to be utilized for passive equipment storage. The MOW is no longer located adjacent to the CAIS and will be divided between the new site at Sloan and the Victor Valley Station area.</p>
<p>SLOAN VEHICLE MAINTENANCE FACILITY (VMF)</p>	<p>The Project design evaluated in the DesertXpress EIS included an OMSF in close proximity to the original Victorville Station west of the I-15 freeway and included facilities for maintaining and storing trains. Project modifications evaluated in 2020 included relocating the Victorville Station to the south side of the I-15 freeway at Dale Evans Parkway in Apple Valley. At that time, it was</p>

proposed the OMSF would be collocated with the Victorville Station, and a separate location for vehicle maintenance and storage had not been identified. The current Project modifications include locating the vehicle maintenance and storage activities at a site located in Segment 6 west of and within 1.5 miles of the I-15 freeway, and south of Sloan Road; the Victor Valley Station permanent footprint would remain unchanged. An additional freight track corridor will be constructed to connect the VMF to the adjacent UPRR. Brightline West have filed a connection request and are coordinating with UPRR regarding the connection design and operational concepts. UPRR have granted preliminary approval of this rail connection, which would be subject to additional design development. The Sloan VMF and adjacent UPRR connection would require 246 acres of permanent footprint and 105 acres of temporary footprint,6 and includes:

- Storage and staging tracks and overhead catenary system from which trains would be mobilized for daily operations.
- Equipment and operations associated with the Sloan VMF, including but not limited to a train car wash station, a train performance monitoring station, an Operations Control Center, a power substation and distribution lines, utility connections, circulation system, site control, fencing, and parking.

The Sloan VMF will be a permanent workplace for approximately 100 employees related to either the maintenance of the Brightline West train fleet or performing other functions such as driving the trains. These facilities would be located on land under BLM jurisdiction and would therefore require a ROW grant lease from BLM.

TEMPORARY CONSTRUCTION AREAS (TCAS)

TCAs are areas that would be utilized for construction staging and storage. No permanent project features would be installed in these areas, and they would be restored/vacated upon completion of construction. The modified Project includes an additional 202 TCAs located within Caltrans/NDOT ROW along the I-15 freeway corridor for construction of the rail alignment. These are in addition to TCAs previously identified in the original project description and the September 2020 Reevaluation. Most of these additional TCAs are areas located within the existing I-15 freeway ROW. The addition of these TCAs adds 1,492 acres of temporary footprint to

the project¹¹ The Sloan VMF facility footprint includes 105 acres of temporary footprint required for constructing the Sloan VMF and UPRR Connection.

¹¹ As more of the alignment has been shifted to be within the I-15 freeway median, additional TCAs are proposed since room for construction within the I-15 freeway median is more limited and needs to be spread out throughout the alignment.