

PROJECT MODIFICATIONS (SINCE THE SEPTEMBER 2020 REEVALUATION)⁹—Continued

Project feature	Description of modification
Sloan Vehicle Maintenance Facility (VMF)	<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 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:</p> <ul style="list-style-type: none"> • 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. <p>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.</p>
Temporary Construction Areas (TCAS)	<p>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 project.¹¹ The Sloan VMF facility footprint includes 105 acres of temporary footprint required for constructing the Sloan VMF and UPRR Connection.</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.

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.

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36488]

**DesertXpress Enterprises, LLC—
Authority To Construct and Operate—
Petition for Exemption From 49 U.S.C.
10901—Passenger Rail Line Between
the Victor Valley, Cal. and Rancho
Cucamonga, Cal.**

On April 13, 2021, DesertXpress Enterprises, LLC, a Nevada limited liability company, d/b/a Brightline West

(DesertXpress),¹ 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 an approximately 50-mile high-speed passenger rail line between the Victor Valley, in Southern California, and Rancho Cucamonga, Cal. (the RC Line). DesertXpress plans to operate as a common carrier providing passenger rail service on the rail line to be

¹ 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. (DesertXpress Pet. 2 n.2.)

constructed. DesertXpress does not plan to provide freight rail service. No comments opposing the transportation merits of DesertXpress' petition were filed.

On July 12, 2021, the Board instituted a proceeding under 49 U.S.C. 10502.² As discussed below, the Board, through the Office of Environmental Analysis (OEA), participated in the environmental and historic review of the RC Line as a cooperating agency

² On July 21, 2023, DesertXpress filed a letter requesting that the Board expedite a final decision in this proceeding. On July 27, 2023, U.S. Representative Dina Titus filed a letter urging the Board to expeditiously consider DesertXpress' petition.

under the lead of the Federal Railroad Administration (FRA). This thorough environmental review took a “hard look” at environmental impacts, selected a preferred alternative, and recommended environmental mitigation conditions to avoid or minimize the selected alternative’s potential environmental impacts. After considering the entire record on both the transportation and the environmental issues, the Board will grant DesertXpress’ petition for exemption, subject to environmental conditions.

Background

In *DesertXpress Enterprises, LLC—Construction & Operation Exemption—in Victorville, Cal. and Las Vegas, Nev.*, FD 35544 (STB served Oct. 25, 2011), the Board exempted from the prior approval requirements of 49 U.S.C. 10901 DesertXpress’ proposal to construct and operate an approximately 190-mile high-speed passenger rail line between Las Vegas, Nev., and the Victor Valley (the LV Line).³ The RC Line will extend from a point of connection with the southern terminus of the LV Line in the Victor Valley to Rancho Cucamonga. (DesertXpress Pet. 4.) The RC Line’s alignment will be entirely within the I–15 right-of-way except for the final mile at Rancho Cucamonga, which will exit the I–15 right-of-way, proceed west along 8th Street and terminate adjacent to the Southern California Regional Rail Authority’s (Metrolink’s) Rancho Cucamonga train station on the south side of 8th Street west of Milliken Avenue.⁴ (*Id.* at 5.) DesertXpress’ Rancho Cucamonga station will link DesertXpress’ train services with the passenger services operated by Metrolink and the bus rapid transit system. (*Id.* at 6.) DesertXpress states that connecting its service to Metrolink’s rail system in this manner will create a seamless all-rail option for travel between Las Vegas and points throughout the greater Los Angeles, Cal., Orange County, Cal., and San Bernardino, Cal. metropolitan areas. (*Id.* at 14.) The RC Line will be built and operated on a dedicated, fully grade-

separated right-of-way with no at-grade crossings. (*Id.* at 4.) It will consist of a single main-line track with passing sidings and will be dedicated exclusively to high-speed passenger service. (*Id.* at 4, 18.)

DesertXpress currently plans to operate 50 trains per day (25 in each direction) between Las Vegas and Rancho Cucamonga. (*Id.* at 7.) Trains will depart from both Las Vegas and Rancho Cucamonga at 45-minute intervals and will operate at speeds up to 180 miles per hour. (*Id.*) The first trains will depart Rancho Cucamonga and Las Vegas at 5:30 a.m. with the final trains arriving in Rancho Cucamonga and Las Vegas at approximately 11:30 p.m. and 1:00 a.m., respectively. (*Id.*)

The RC Line is forecasted to attract approximately 1.5 million additional passengers to DesertXpress’ train service, compared to the LV Line standing alone, by the third year of revenue operations. (*Id.* at 6.) Travelers on the RC Line will include both passengers traveling between Las Vegas and Southern California and passengers traveling between the Victor Valley and Rancho Cucamonga stations. (*Id.*) According to DesertXpress, the service between Victor Valley and Rancho Cucamonga is expected to attract more than half a million riders annually by the second year of service and the RC Line is expected to double the number of westbound passengers who choose DesertXpress train service for their travel from Las Vegas to Southern California. (*Id.*)

DesertXpress plans to commence construction of the RC Line as soon as practicable following approval of its petition. (*Id.* at 11.) According to DesertXpress, the estimated cost of constructing the RC Line is approximately \$2 billion and Brightline plans to finance the construction with a blend of tax-exempt bonds, taxable debt, and equity. (*Id.*)

Several parties filed comments in response to DesertXpress’ petition. The only comment on the transportation merits was filed on May 13, 2021 by the Allied Rail Unions⁵ stating that they support DesertXpress’ petition. On May 5, 2021, the San Manuel Band of Mission Indians (San Manuel Band) filed comments on environmental issues and a request for an extension of time to file further comments. The Board granted that request in a decision served

on May 19, 2021. In addition, the San Manuel Band, Morongo Band of Mission Indians (Morongo Band), and the National Parks Conservation Association (NPCA) filed comments regarding environmental issues on June 3, 2021, June 4, 2021, and June 8, 2021, respectively. On June 22, 2021, DesertXpress filed a reply to the comments of San Manuel Band, Morongo Band, and NPCA.

Discussion and Conclusions

Rail Transportation Analysis. The construction of new rail lines requires prior Board authorization through issuance of a certificate under 49 U.S.C. 10901 or, as requested here, through an exemption under 49 U.S.C. 10502 from the prior approval requirements of section 10901. Section 10901(c) directs the Board to authorize 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). Thus, Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise. See *N. Plains Res. Council v. STB*, 668 F.3d 1067, 1091–92 (9th Cir. 2011); *Mid States Coal. for Progress v. STB*, 345 F.3d 520, 557 (8th Cir. 2003).

Under section 10502(a), the Board “shall exempt” a proposed rail line construction from the detailed application procedures of section 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP); and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

Based on the record in this proceeding, the Board concludes that the proposed construction qualifies for an exemption from the section 10901 prior approval requirements. Simply put, this is a project with a lot of upside and little, if any, downside, one that has the potential for broad public benefits, and one for which no issues about the project’s current or future financial viability, including any negative effects of financial nonviability, have been raised.⁶ Extending DesertXpress’ previously approved service between Las Vegas and Victor Valley further south to Rancho Cucamonga and

³ The LV Line has not yet been constructed. On March 27, 2019, DesertXpress filed a petition to reopen the Board’s October 25, 2011 decision, in which DesertXpress requested that the Board approve changes to the alignment of the LV Line, including moving the proposed terminus approximately four miles from the City of Victorville to the Town of Apple Valley, both situated in the Victor Valley. The Board will address the proposed alignment changes to the LV Line in a separate decision.

⁴ An additional DesertXpress station in the City of Hesperia, Cal. (south of Victorville) is also planned. (DesertXpress Pet. 5.)

⁵ The Allied Rail Unions is a group of unions composed of the Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU.

⁶ See *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 552 (8th Cir. 2003).

providing a connection to Metrolink's rail service there supports the RTP. It will provide additional transportation options for travelers throughout the greater Los Angeles, Orange County and San Bernardino metropolitan areas, thereby reducing congestion on the I-15 freeway, while also reducing air pollution and overall fuel consumption. Thus, the RC Line will help "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes," 49 U.S.C. 10101(4), and will "encourage and promote energy conservation." 49 U.S.C. 10101(14). In addition, constructing the RC line to extend DesertXpress' service will help "foster sound economic conditions in transportation," 49 U.S.C. 10101(5), by increasing demand for DesertXpress' service. As noted above, it is projected that the RC Line will attract an additional 1.5 million passengers to DesertXpress' train service annually. An exemption will also minimize the time and administrative expense associated with obtaining Board approval and expedite the introduction of a new rail service for millions of travelers and will therefore both "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. 10101(7), and "provide for the expeditious handling and resolution of . . . proceedings required or permitted to be brought [before the Board]." 49 U.S.C. 10101(15). Other aspects of the RTP would not be adversely affected.

In addition, consideration of the RC Line under section 10901 here is not necessary to protect shippers from an abuse of market power. The RC Line will not be used to provide freight rail transportation to shippers, nor will it cause any shipper to lose access to any rail options.⁷

Environmental Analysis. The National Environmental Policy Act (NEPA) requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public concerning those effects. *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize a railroad construction project as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions).

Lone Star R.R. Track Constr. & Operation Exemption—in Howard Cnty., Tex., FD 35874, slip op at 4 (STB served Mar. 3, 2016). 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 (1989). Once the adverse environmental effects have been adequately identified and evaluated, an agency may conclude that "other values outweigh the environmental costs." *Id.*

In every exemption case, the Board considers both the transportation merits and the environmental impacts in deciding whether to authorize the proposed action. With respect to environmental issues, the Board, through OEA, participated in the environmental and historic review of the RC Line as a cooperating agency under the lead of FRA. FRA prepared an Environmental Assessment (EA) in accordance with NEPA, the National Historic Preservation Act (NHPA), and related environmental laws to evaluate the potential environmental and historic impacts of the RC Line. The EA analyzed both a Build Alternative and No-Build Alternative (*i.e.*, No-Action Alternative), and FRA identified the Build Alternative as the preferred alternative. (EA xv, 10–14.) The EA also identified mitigation measures to reduce potential environmental impacts. (EA 57–58, 61–63, 67, 90–102, 137–38, 173–76, 192, 198–200.) The EA was made available for public review and comment between October 28, 2022, and November 28, 2022.

On July 12, 2023, FRA issued a Finding of No Significant Impact (FONSI), which incorporated the EA by reference. The FONSI concluded that the Build Alternative would not significantly impact the quality of the human environment and should be authorized subject to appropriate environmental mitigation (FONSI 15 & Attach. A). The FONSI also addressed the public comments on the EA. The comments received on the EA were minor and the responses to the comments were limited to factual corrections or explanations of why the comments did not warrant further response. (FONSI 2.)

Concurrently with preparation of the EA, FRA initiated consultation under Section 106 of NHPA, which included efforts to identify, evaluate, and assess effects to historic properties that could be impacted by the RC Line.⁸ (EA 138–

58.) FRA concluded that construction and operation of the RC Line would have no adverse effects on resources listed in or eligible for listing in the National Register of Historic Places. (*Id.*) The California State Historic Preservation Officer (SHPO) did not object to FRA's finding of no adverse effect for the RC Line. FRA issued a final Finding of Effect report and made a finding of no adverse effect for the RC Line on June 30, 2023. (*Id.* at 13–14.) Accordingly, no historic mitigation was imposed. (*Id.* at 8, 10 & Attach. A.)

OEA prepared a memorandum making final environmental recommendations for this proceeding (Environmental Memo), which is attached to this decision. The Environmental Memo summarizes the environmental and historic review process, the potential environmental impacts of the construction and operation of the RC Line, and FRA's mitigation measures to minimize those impacts. (Environmental Memo 3–8.) The Environmental Memo recommends that the Board adopt FRA's EA and the conclusions in the FONSI, and that it impose the environmental mitigation measures set forth in Attachment A to the FONSI as conditions to any decision authorizing construction and operation of the RC Line. (Environmental Memo 8–9.)

The Board's Analysis of the Environmental Issues. The Board adopts FRA's analysis and conclusions in both the EA and FONSI. The Board is satisfied that OEA, together with FRA and the cooperating agencies, has taken the requisite "hard look" at the potential environmental impacts associated with DesertXpress' proposal and properly determined that, with the recommended environmental mitigation in the FONSI, the RC Line will not have potentially significant environmental impacts and that preparation of an Environmental Impact Statement is unnecessary.

As noted above, San Manuel Band, Morongo Band, and NPCA filed comments regarding environmental issues. However, those comments raise concerns regarding FRA's

Ontario, City of Rancho Cucamonga, City of Rialto, City of Victorville, Federal Highway Administration, U.S. Army Corps of Engineers, and the United States Forest Service. (FONSI 13). As part of that process, FRA consulted with the Chairpersons of and/or Tribal Historic Preservation Officers for the Chemehuevi Indian Tribes, the Colorado River Indian Tribes, the Morongo Band of Mission Indians, the San Fernando Band of Mission Indians, the Soboba Band of Luiseno Indians, and the Twenty-Nine Palms Band of Mission Indians, and identified tribal contacts for the Yuhaaviatam of San Manuel Nation (formerly the San Manuel Band). (*Id.*)

⁷ Because regulation of the proposed construction and operation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. 49 U.S.C. 10502(a)(2).

⁸ The Board participated as a consulting party in FRA's Section 106 consultation process, along with the Advisory Council on Historic Preservation, DesertXpress, Caltrans, City of Fontana, City of

environmental and historic review process with respect to the proposed modified alignment of the LV Line. (San Manuel Band Comments 1–2, May 5, 2021; Morongo Band Comments 1–2; NPCA Comments 1.) The LV Line is not at issue in this proceeding and parties were given the opportunity in *DesertXpress Enterprises, LLC*, Docket No. FD 35544, to provide comments in the LV Line proceeding. See *DesertXpress Enters., LLC*, FD 35544, slip op. 1–2 (STB served Dec. 3, 2020) (providing 20-day period for filing of public comments). Accordingly, comments regarding the modified alignment of the LV Line will not be considered in this proceeding.

In addition, San Manuel Band and NPCA urge the Board not to permit an exemption from review under the California Environmental Quality Act (CEQA). (San Manuel Band Comments 2–3, June 3, 2021; NPCA Comments 2.) However, the only issue for the Board in this case is whether to grant DesertXpress' petition seeking an exemption from 49 U.S.C. 10901. Moreover, state permitting or preclearance requirements like CEQA are categorically preempted under 49 U.S.C. 10501(b) as to any lines and facilities that are an integral part of the national rail transportation system. *EPA—Pet. for Declaratory Ord.*, FD 35803, slip op. at 7 (STB served Dec. 30, 2014); see also *City of Auburn v. United States*, 154 F.3d 1025, 1031 (9th Cir. 1998). Indeed, the Board previously found that section 10501 preempted the application of CEQA to the LV Line.⁹ *DesertXpress Enters., LLC—Pet. for Declaratory Ord.*, FD 34914, slip op. at 5 (STB served June 27, 2007). Because CEQA's permitting requirements could be used to deny or significantly delay construction of the RC Line, CEQA review is preempted in this proceeding as well.¹⁰

⁹ Although the California High-Speed Rail Authority conducted an environmental review under CEQA as well as NEPA for the California High-Speed Train System—a project within the Board's jurisdiction—it “elected” to apply CEQA on its own volition and, in its environmental documentation, reserved the right to assert federal preemption in response to any potential legal challenge to its CEQA compliance. *Cal. High-Speed Rail Auth.—Pet. for Declaratory Ord.*, FD 35861, slip op. at 1–2, 11 (STB served Dec. 12, 2014); see also *Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cnty.*, *Cal.*, FD 35724 et al., slip op. at 3 n.6 (STB served Dec. 20, 2022) (finding that the “Board is only required to comply with NEPA” and related federal environmental laws despite FRA and California High-Speed Rail Authority conducting joint NEPA and CEQA review).

¹⁰ While the RC Line will be an intrastate line located completely within California, it will connect to the LV Line, which will extend into Nevada. Therefore, the RC Line will be part of the

The project's transportation merits—expanding the broader DesertXpress passenger service to provide more seamless transportation to and from Southern California and Las Vegas, as well as providing a passenger rail option between Rancho Cucamonga and Victor Valley—are manifest. And the environmental and historic impacts have been thoroughly analyzed as required under NEPA and NHPA, with environmental mitigation imposed as appropriate. Accordingly, the Board grants DesertXpress' petition for exemption.

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

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts DesertXpress' construction and operation of the RC Line from the prior approval requirements of 49 U.S.C. 10901, subject to the requirement that DesertXpress build the FRA-preferred Build Alternative.
2. The Board adopts the environmental mitigation measures set forth in Attachment A to the FONSI and imposes them as conditions to the exemption granted here.
3. Notice will be published in the **Federal Register**.
4. Petitions for reconsideration must be filed by December 6, 2023.
5. This decision is effective, December 16, 2023.

Decided: November 15, 2023.

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

Jeffrey Herzig,
Clearance Clerk.

Appendix

Surface Transportation Board

Washington, DC 20423



interstate rail network and will be subject to the Board's jurisdiction. See e.g., 49 U.S.C. 10501(a)(2)(A) (stating that the Board has jurisdiction over rail transportation between a place in “a State and a place in the same or another State as part of the interstate rail network”); *Cal. High-Speed Rail Auth.—Pet. for Declaratory Ord.*, FD 35724, slip op. at 13–14 (STB served June 13, 2013) (finding that a rail line to be located completely within California was subject to Board jurisdiction because it would have extensive interconnectivity with Amtrak, an interstate passenger rail carrier).

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 20, 2023

SUBJECT: Docket No. FD 36488, DesertXpress Enterprises, LLC—Construction and Operation Exemption—Passenger Rail Line Between Victor Valley and Rancho Cucamonga, Cal.: Environmental Memorandum

This memorandum summarizes the environmental and historic review conducted for the proposed 49-mile high-speed rail line between the Victor Valley and Rancho Cucamonga, California (RC Line or Project). The proposed RC Line would be part of the electrified high-speed passenger railroad system that DesertXpress Enterprises, LLC, d/b/a Brightline West (Brightline West) intends to construct and operate between Southern California and Las Vegas, Nevada. The memorandum also presents the Office of Environmental Analysis' (OEA) final recommendations to the Board regarding adoption of the Environmental Assessment (EA) for the Project, including the selection of the build alternative as the preferred alternative, and the environmental mitigation that should be imposed if the Board authorizes the RC Line.

Introduction

The Board, through OEA, participated in the environmental review of the RC Line as a cooperating agency under the lead of the Federal Railroad Administration (FRA). FRA prepared an EA in accordance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related environmental laws to evaluate the potential environmental and historic impacts of the RC Line. The EA analyzed both a Build Alternative and No-Build Alternative (*i.e.*, No-Action Alternative), and FRA identified the Build Alternative as the Preferred Alternative. (EA xv, 10–14.) The EA also identified mitigation measures to reduce potential environmental impacts. (EA 57–58, 61–63, 67, 90–102, 137–38, 173–76, 192, 198–200.) The EA was made available for public review and comment between October 28, 2022, and November 28, 2022.

On July 12, 2023, FRA issued a Finding of No Significant Impact (FONSI), which incorporated the EA by reference,¹ and which concluded that the Build-Alternative would not significantly impact the quality of the human environment and should be authorized subject to appropriate

¹ The FONSI attached an errata sheet making certain corrections to the EA. (FONSI, Attachment B.) FRA used an errata sheet in lieu of a Final EA because the comments received on the EA were minor and the responses to the comments were limited to factual corrections or explanations of why the comments did not warrant further response. (FONSI 2.)

environmental mitigation. (FONSI 15, 17 & Attachment A.) The FONSI summarized the Project's potential construction and operations impacts, as well as FRA's proposed mitigation measures, and addressed the public comments on the EA. (FONSI 7–13 & Attachment C.)

OEA has independently reviewed the EA and FONSI and agrees with FRA's analysis and conclusions. Further, OEA has determined that the EA adequately assesses the potential environmental and historic impacts of the RC Line and complies with the Board's responsibilities under NEPA, NHPA, and related environmental laws. OEA also concurs with FRA's selection of the Build-Alternative as the Preferred Alternative. Therefore, in any decision authorizing construction and operation of the RC Line, OEA recommends that the Board: (1) adopt the EA and FRA's conclusions in the FONSI; (2) approve construction and operation of

FRA's Build-Alternative for the RC Line; and (3) impose the environmental mitigation in Attachment A to the FONSI.

Background

On April 13, 2021, Brightline West filed a petition for exemption with the Board under 49 U.S.C. 10502 to construct and operate the RC Line. Brightline West proposes to construct the RC Line within the Interstate-15 (I–15) right-of way for 48 miles and on existing transportation corridors for the last mile into the proposed Rancho Cucamonga station. (FONSI 1.) The RC Line would include two new rail stations—one in Hesperia and one in Rancho Cucamonga, both in California.² (*Id.*)

The purpose of the RC Line is to provide an alternative transportation option (in addition to cars) between the Los Angeles metropolitan region and the High Desert of San Bernardino County. (FONSI 3.) Trains

are expected to operate daily every 60 minutes between the Victor Valley and Rancho Cucamonga. (*Id.* at 1.) The trip between the Victor Valley and Rancho Cucamonga will be approximately 35 minutes. Service will be coordinated with existing and planned Metrolink service at the Rancho Cucamonga station to provide a convenient connection between the RC Line and commuter rail systems. (*Id.*) Trains traversing over the RC Line would be capable of reaching a top speed of approximately 140 miles per hour. (*Id.*)

Summary of Environmental Impacts and Mitigation Measures

The charts below from FRA's FONSI provide an overview of the potential construction and operations impacts of the RC Line, and the associated mitigation measures to minimize these impacts.

Analysis area	Long-term operational impacts of the selected alternative	Mitigation
Transportation	<p>The Rancho Cucamonga station will result in traffic impacts to three intersections that are projected to operate at unacceptable level of service during the 2025 Opening Year conditions during peak periods and will also degrade the level of service at the Milliken Avenue/7th Street Intersection compared to the 2045 No Build scenario.</p> <p>Operation of the Project would increase demand for local transit at the Hesperia station, such that the hourly volume of passengers desiring to depart the station via bus will likely exceed the available bus capacity during any single hour. At the Rancho Cucamonga station, the Project will impact passengers utilizing regional rail on Sunday, when there is a 5-hour period in the late afternoon/early evening with only one train in each direction. Based on ridership estimates, parking at the Hesperia and Rancho Cucamonga stations will exceed the amount of existing and planned spaces at the station in the 2045 Horizon Year.</p>	<p>During Project design, Brightline West will coordinate with SBCTA, Caltrans, Rancho Cucamonga, and Hesperia to incorporate intersection improvements to lessen or avoid adverse impacts to traffic to the extent feasible, including optimizing signal timing to reflect changes in traffic flows in station areas during operation of the Project.</p> <p>Brightline West will coordinate with local transit agencies to identify opportunities to best serve the needs of transit users at the Hesperia and Rancho Cucamonga stations without significantly affecting other transit services.</p> <p>Brightline West will develop and implement a parking demand management plan prior to operation of the Project to manage increasing parking demand at the Hesperia and Rancho Cucamonga stations.</p>
Land Use and Community Facilities.	None	None.
Socioeconomic Environment.	None	None.
Cultural Resources	None	None.
Aesthetics	<p>The Project would have a permanent impact on views of the San Gabriel and San Bernardino Mountains, as well as the Southern California Edison Boulder Dam-San Bernardino transmission lines from northbound I–15, looking north toward the split of northbound and southbound I–15 as it climbs toward the summit of Cajon Pass.</p>	<p>During the design phase, Brightline West will design rail features, including bridge pillars/columns, raised tracks, trains, catenary structures, crash barriers, retaining walls, abutments, fencing, and embankments to blend with or represent the surrounding desert or urban environment. Features will be created or stained in muted desert colors. Bright colors and highly reflective materials will be avoided, as feasible. Project elements defined in the design process will include visual elements that contribute to a sense of place and a memorable experience for motorists, pedestrians, and rail passengers. Concrete will be embossed with patterns, where appropriate, that are indicative of the surrounding environment and that create a visual link between the railway features and their surroundings and will be similar in character to recent nearby freeway projects.</p>
Water Quality	<p>The Project will result in permanent increased impervious surface along the rail alignment and the proposed Hesperia station, which will increase the amount of stormwater runoff and nonpoint-source pollution in some areas, affecting 48 ephemeral or intermittent drainage features.</p>	<p>To protect water quality, Brightline West will install permanent water quality treatment devices in accordance with the National Pollutant Discharge Elimination System (NPDES) permit obtained for the Project (Mitigation Measure WQ–7).</p> <p>Brightline West will redesign and resize the existing drainage features to accommodate the potential increase in runoff along the rail alignment. Additionally, stormwater treatment will be designed in accordance with the Caltrans Project Planning and Design Guide (PPDG). The 100-year, 24-hour storm event will be used to determine the appropriate size of drainage facilities need for the Project (Mitigation Measure WQ–8).</p>

² A station at Victorville connecting the RC Line to the separate high-speed passenger rail project between the Victor Valley and Las Vegas, Nevada, was approved by the Board in 2011. *DesertXpress Enters., LLC, et al.—Constr. & Operation Exemption—in Victorville, Cal. & Las Vegas, Nev.,*

FD 35544, slip op. at 2, 5 (STB served Oct. 25, 2011). On March 27, 2019, Brightline West petitioned the Board to reopen the 2011 decision to permit construction of the Victor Valley-Las Vegas line along a different route than what had been previously approved. The project modifications also

include moving the Victorville station to within the Town of Apple Valley. The Victor Valley-Las Vegas line has involved a separate environmental review and is currently pending before the Board.

Analysis area	Long-term operational impacts of the selected alternative	Mitigation
Wetlands and Stream Areas.	During Project operation, railway crossings over Debris Cone Creek, Cajon Wash/Creek, and Lytle Creek will require new structures in the channels. All crossings will result in less than 0.1 acre of permanent fill. The Project will have no permanent impacts on the Mojave River itself, but a small portion (less than 0.01 acre) of wetlands associated with the Mojave River will be permanently impacted.	Prior to construction, Brightline West will coordinate with USACE to obtain a jurisdictional determination for aquatic resources. If applicable, Brightline West will obtain any required permits and implement all required permit conditions.
Floodplains	None	None.
Biological Resources	Approximately 64 acres of native vegetation habitat types will be permanently converted to transportation uses by the Project. Permanent impacts occur in a wide variety of habitat types; most permanent impacts would occur in Desert Scrub habitats (37 acres).	Brightline West will implement mitigation and compensation strategies identified during consultation with USFWS and documented in USFWS' Biological Opinion. Brightline West will also obtain an Incidental Take Permit for Endangered Species Act (ESA)-listed species. Refer to Attachment A, for a list and description of Mitigation Measures BIO-1 through BIO-57.
Geology, Soils, and Seismicity.	Seismic activity during operation could result in impacts related to surface fault rupture, ground shaking, and liquefaction because the Project alignment crosses or comes within 1,000 feet of four major faults: the Sierra Madre, the San Jacinto, the San Andreas, and the Cleghorn faults.	Brightline West will hire qualified geologists and geotechnical engineers to conduct geotechnical investigations along the Project alignment for potential hazards related to geology, soils, seismicity. Brightline West will incorporate recommendations of the evaluation that avoid or minimize hazardous impacts and will be implemented prior to design and construction. Refer to Attachment A for a list and description of Mitigation Measures GEO-2 through GEO-8.
Air Quality and Greenhouse Gas.	None. The Project will not result in exceedances of the de minimis thresholds for criteria pollutants in the applicable air basins. As ridership increases during the operation period, the Project will reduce emissions of both criteria pollutants and GHGs by providing an alternative to passenger car travel and reducing vehicle miles traveled within the South Coast Air Basin and Mojave Desert Air Basin, resulting in a beneficial impact to air quality and reductions in greenhouse gas emissions.	None.
Energy Resources	None	None.
Noise and Vibration	None	None.
Safety and Security	None	None.
Environmental Justice ..	The Project will not result in disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.	None.

Analysis area	Temporary construction-related impacts of the selected alternative	Mitigation
Transportation	None	None.
Land Use and Community Facilities.	None	None.
Socioeconomic Environment.	None	None.
Cultural Resources	None	None.
Aesthetics	Changes in visual quality from construction will result from implementation of standard industry practices, including the use of temporary lighting, fences, barriers, stockpiling of materials, and the use of heavy equipment, and will result in temporary visual disturbances to natural visual resources.	Brightline West will implement measures to minimize nighttime light spillover onto adjacent properties, to reduce glare for freeway motorists, and to prevent visible lighting overflow into the natural dark sky of the desert at night. Visual screening, such as fences, will be erected along construction and staging areas as appropriate. Landscaping and native vegetation that is cleared for temporary construction areas (TCA) will be replaced by Brightline West within one year of the completion of construction at any location along the alignment.
Water Quality	Construction of the Project will impact water quality from activities involving soil disturbance, excavation, cutting/filling, stockpiling, and grading. Grading could result in increased erosion and sedimentation of surface waters. Stormwater runoff from TCAs could contain sediment and other contaminants, and could carry contaminants to drainages, groundwater, and impaired water bodies.	Brightline West will implement Best Management Practices (BMP) during construction and operation of the Project to minimize impacts on aquatic resources (Mitigation Measure WQ-1), comply with the statewide National Pollutant Discharge Elimination System (Mitigation Measure WQ-2), implement a stormwater pollution prevention program (SWPPP) (Mitigation Measure WQ-3), implement a spill prevention, control and countermeasures plan (SPCC) (Mitigation Measure WQ-4), locate TCAs to avoid key water features (Mitigation Measure WQ-5), and obtain water from existing, commercially available water sources (Mitigation Measure WQ-6).
Wetlands and Streams ..	Construction of bridges over the Bell Mountain Wash, Mojave River, Brush Creek, Cleghorn Creek, Cajon Wash/Creek and Lytle Creek, will involve work in the Ordinary High Water Mark (OHWM). The Project may require temporary soil disturbance and vegetation clearing within the Mojave River riparian area and in and around other drainages along the corridor.	Brightline West will contract with a qualified biologist, who will be on site prior to and during construction of the Project to identify and protect aquatic resources. The biologist will define the boundaries of the aquatic resources and will supervise the placement of exclusion fencing to protect those areas during all project activities. Additionally, a silt fence around the construction areas adjacent to aquatic resources will protect the resources, including waters of the United States (WOTUS), from runoff and spills associated with construction activities, if any. Aquatic resources that are affected by construction activities (e.g., clearing, ground disturbance) will be restored by Brightline West with native vegetation within one year of the completion of construction at any location along the alignment.

Analysis area	Temporary construction-related impacts of the selected alternative	Mitigation
Floodplains	Project construction will involve the use of heavy, earth-moving equipment in the floodplains of the Mojave River and Lytle Creek, and near the floodplains of Etiwanda Channel and Hawker-Crawford Channel. Construction activities within floodplains will likely result in temporary impacts such as minor erosion and runoff on floodplains.	Brightline West will implement BMPs prior to construction to minimize the temporary effects on floodplains, and construction equipment and materials will not be stored within the floodplain. Brightline West will return any temporary effects on floodplains to preconstruction conditions.
Biological Resources	Construction of the project would have temporary impacts on approximately 2,206 acres of various types of wildlife habitat. The most common habitat types would be Urban (1,787 acres), Desert Scrub (168 acres), and Mixed Chaparral (128 acres). Construction impacts would include disturbance of vegetation and soils, construction noise, hydrologic modifications, facilitation of invasive species, and changes in habitat elements that increase or decrease populations of predators or prey species.	Brightline West will implement mitigation and compensation strategies identified during consultation with USFWS and documented in USFWS' Biological Opinion. Brightline West will also obtain an Incidental Take Permit for ESA-listed species. Refer to Attachment A, for a list and description of Mitigation Measures BIO-1 through BIO-57.
Geology, Soils, and Seismicity.	Construction of the Project may result in impacts related to ground fissures due to pile driving.	Brightline West will retain qualified geologists and geotechnical engineers to conduct geotechnical investigations along the Project alignment for potential hazards related to geology, soils, seismicity. Recommendations of the evaluation that avoid or minimize hazardous impacts will be implemented prior to design and construction (Mitigation Measure GEO-1).
Air Quality and Greenhouse Gas.	Construction of the Project will temporarily generate emissions of both criteria pollutants and GHGs. However, the Project will not result in exceedances of the de minimis thresholds for criteria pollutants in the applicable air basins. The Project will result in short-term increases in GHG emissions from construction activities.	Prior to construction activities, Brightline West will develop and implement a fugitive dust control plan and utilize additional means to reduce construction period emissions of air pollutants, such as solar powered signal boards.
Energy Resources	None	None.
Noise and Vibration	Construction of the Project will result in short-term noise impacts to resources due to elevated noise levels associated with construction activities, including construction equipment, diesel engines, impact pile driving and jackhammering.	Brightline West will require the contractors to prepare a detailed Noise Control Plan (Mitigation Measure NOI-1) in coordination with a qualified noise monitor prior to construction. Brightline West will comply with all applicable local noise regulations to minimize temporary construction noise and vibration impacts (Mitigation Measure NOI-2).
Hazardous Materials	Construction of the Project may result in the release of hazardous materials through disturbance of identified hazardous materials sites and using hazardous materials, either of which may result in impacts on human health. There is also the potential to encounter previously unidentified hazardous materials along the Project footprint.	Brightline West will prepare a Hazardous Materials Management Plan (HMMP) prior to application for permits for demolition, grading, or construction, as required by the State of California (Mitigation Measure HAZ-1). The HMMP shall be reviewed and approved by either the office of the State Fire Marshall or the San Bernardino County Certified Unified Program Agency (CUPA). Activities identified in the HMMP will be implemented by Brightline West throughout the construction period.
Safety	Construction of the Project will involve use of heavy equipment on site, earthwork, and other major construction activities, including the transportation of overweight and oversized materials. Throughout construction, workers and nearby community members could be exposed to hazards, which could affect human health or present to safety from construction site hazards and accidents, associated with construction site equipment and activities. Project construction could temporarily increase fire risks in the high fire hazard severity zones (FHSZ) due to the storage and use of flammable or combustible materials, operation of vehicles and heavy machinery. The Rancho Cucamonga and Hesperia stations will not be located within FHSZ zones.	Brightline West will implement construction safety requirements during construction, per regulatory requirements, including California Division of Occupational Safety and Health (Cal OSHA) Construction Safety Orders and California Public Utilities Commission (CPUC) General Order No. 176.
Environmental Justice ...	The Project will not result in disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.	None.

Historic Review Under Section 106

Concurrently with preparation of the EA, FRA initiated consultation under Section 106 of the NHPA, which included efforts to identify, evaluate, and assess effects to historic properties that could be impacted by the RC Line. (EA 138–58.) As part of that process, FRA consulted with the Chairpersons of and/or Tribal Historic Preservation Officers for the Chemheuvi Indian Tribes, the Colorado River Indian Tribes, the Morongo Band of Mission Indians, the San Fernando Band of Mission Indians, the Soboba Band of Luiseno Indians, and the Twenty-Nine Palms Band of Mission Indians, and identified tribal contacts for the Yuhaaviatam of San Manuel Nation. (FONSI 13.) The Board participated as a consulting party in FRA's Section 106 consultation process, along with the Advisory Council on Historic Preservation, Brightline West,

Caltrans, City of Fontana, City of Ontario, City of Rancho Cucamonga, City of Rialto, City of Victorville, Federal Highway Administration, United States Army Corps of Engineers, and the United States Forest Service. (*Id.*)

FRA concluded that construction and operation of the RC Line would have no adverse effects on resources listed in or eligible for listing in the National Register of Historic Places. (*Id.*) On May 22, 2023, the California State Historic Preservation Officer did not object to FRA's finding of no adverse effect for the RC Line. FRA issued a final Finding of Effect report and made a finding of no adverse effect for the Project on June 30, 2023. (*Id.* at 13–14.) Accordingly, no historic mitigation was imposed. (*Id.* at 8, 10 & Attachment A.)

OEA's Final Environmental Recommendations

After participating in FRA's environmental review, OEA concludes that the EA adequately assesses the potential environmental and historic impacts associated with the RC Line and concurs with the conclusions reached by FRA in the FONSI. Accordingly, OEA recommends that the Board adopt FRA's EA and the conclusions in the FONSI, and that it impose the environmental mitigation attached to the FONSI at Attachment A as conditions to any decision authorizing construction and operation of the RC Line. OEA concludes that FRA's mitigation measures are adequate to address the potential environmental and historic impacts of the RC Line. Therefore,

OEA does not recommend any additional environmental or historic mitigation.

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2023–0012; Dispute Number WT/DS617]

WTO Dispute Settlement Proceeding Regarding a United States Anti- Dumping Measure on Oil Country Tubular Goods From Argentina

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) invites public comments concerning the issues raised in this World Trade Organization (WTO) dispute settlement proceeding regarding a United States anti-dumping measure on oil country tubular goods from Argentina.

DATES: Although USTR will accept any comments submitted during the course of the dispute settlement proceedings, you should submit your comment on or before December 22, 2023, to be assured of timely consideration by USTR.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in sections III and IV below. The Docket Number is USTR–2023–0012. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395–9483 in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Michael Gagain, Senior Associate General Counsel, (202) 395–9529, or Matthew Jaffe, Senior Associate General Counsel, (202) 395–9512.

SUPPLEMENTARY INFORMATION:

I. Background

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Accordingly, USTR is providing notice that Argentina has requested a dispute settlement panel pursuant to the WTO Understanding on Rules Procedures Governing the Settlement of Disputes (DSU). The panel established by the WTO will hold its meetings in Geneva Switzerland.

II. Major Issues Raised by Argentina

On May 17, 2023, Argentina requested consultations with the United States concerning the imposition of antidumping duties on oil country tubular goods from Argentina, following final determinations by the U.S. Department of Commerce (DOC) and U.S. International Trade Commission (ITC) in *Oil Country Tubular Goods From Argentina: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances* (DOC investigation number A–357–824), and *Oil Country Tubular Goods From Argentina, Mexico, Russia, and South Korea* (ITC investigation numbers 701–TA–671–672 and 731–TA–1571–1573), and section 771(7)(G) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)). The consultation request can be found at www.wto.org in a document designated as WT/DS617/1. The United States and Argentina held consultations on July 6, 2023. On September 1, 2023, Argentina made its request to the WTO to establish a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). That request may be found at www.wto.org in a document designated as WT/DS617/3. On October 26, 2023, the WTO established a panel to examine Argentina's complaint.

Argentina's panel request appears to be concerned with the DOC's examination of whether there was sufficient domestic industry support to justify initiation of its investigation; the ITC's cumulation analysis in its material injury investigation; aspects of the ITC's analyses of volume and imports and price effects in its investigation; and aspects of the ITC's analyses of injury and causation. Argentina claims that the imposition of duties is inconsistent with Article VI of the WTO *General Agreement on Tariffs and Trade 1994* (GATT 1994); and Articles 1, 3.1, 3.2, 3.3, 3.4, 3.5, 5.1, 5.2, 5.3, 5.4, 6.6, and 18.1 of the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Antidumping Agreement). Argentina further alleges that section 771(7)(G) of the Tariff Act of 1930 is inconsistent with Articles 3.1, 3.2, 3.3, 3.4, and 3.5 of the Antidumping Agreement.

III. Public Comments: Requirements for Submissions

To be assured of consideration, submit your written comments by the December 22, 2023 deadline. All submissions must be in English. USTR strongly encourages submissions via

Regulations.gov, using Docket Number USTR–2023–0012.

To make a submission via Regulations.gov, enter Docket Number USTR–2023–0012 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.' Regulations.gov allows users to make submissions by filling in a 'type comment' field, or by attaching a document using the 'upload file' field. USTR prefers that you provide submissions in an attached document and, in such cases, that you write 'see attached' in the 'type comment' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

Please do not attach separate cover letters, exhibits, annexes, or other attachments to electronic submissions; rather, include any in the same file as the submission itself, not as separate files. You will receive a tracking number upon completion of the submission procedure at Regulations.gov. The tracking number is confirmation that Regulations.gov received your submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for Regulations.gov.

For further information on using Regulations.gov, please consult the resources provided on the website by clicking on 'How to Use Regulations.gov' on the bottom of the home page. Contact the Regulations.gov help desk with technical questions on submitting comments at regulationshelpdesk@gsa.gov or 1–866–498–2945.

If you are unable to provide submissions as requested, please contact Sandy McKinzy at (202) 395–9483 in advance of the deadline to arrange for an alternative method of transmission. USTR may not consider submissions that you do not make in accordance with these instructions.

IV. Confidential Submissions

If you ask USTR to treat information you submit as business confidential information (BCI), you must certify that the information is business confidential and you would not customarily release it to the public. For any comments submitted electronically containing BCI, the file name of the business