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April 13, 2021

By Email

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
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Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 13, 2021
Part of
Public Record

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

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a Petition for Exemption from 49 U.S.C. § 10901 for the construction and operation of an extended passenger rail line between Victor Valley and Rancho Cucamonga, CA. The line that is the subject of the Petition for Exemption will connect with the approximately 190-mile high-speed passenger rail line between Las Vegas, NV and Victorville, CA previously exempted by the Board in *DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction and Operation Exemption—In Victorville, Cal. and Las Vegas, Nev.*, STB Docket No. 35544 (STB served Oct. 25, 2011).

Please direct any questions regarding this filing to the undersigned counsel for DesertXpress Enterprises, LLC. Thank you for your assistance in this matter.

Sincerely,



Terence M. Hynes
Counsel for DesertXpress Enterprises, LLC

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cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36488

**DESERTXPRESS ENTERPRISES, LLC –AUTHORITY TO CONSTRUCT AND
OPERATE– PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 – PASSENGER
RAIL LINE BETWEEN VICTOR VALLEY, CA AND RANCHO CUCAMONGA, CA**

PETITION FOR EXEMPTION

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Dated: April 13, 2021

Filing Contains Color Images

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 36488
DESERTXPRESS ENTERPRISES, LLC–AUTHORITY TO CONSTRUCT AND
OPERATE– PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 – PASSENGER
RAIL LINE BETWEEN VICTOR VALLEY AND RANCHO CUCAMONGA, CA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, DesertXpress Enterprises, LLC, a Nevada limited liability company, d/b/a Brightline West (“DXE” or “Petitioner”) submits this Petition for Exemption (the “Petition”) from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate an extended high-speed passenger rail line between the Victor Valley and Rancho Cucamonga, California (the “VVRC Line”), a distance of approximately 50 miles. For the reasons set forth below, the VVRC Line will benefit the public and promote the national transportation policy by providing a safe, reliable, convenient and environmentally friendly rail travel option in the Southern California area. The VVRC Line will extend DXE’s previously approved Las Vegas to Victorville high speed rail service, creating the first through passenger rail service between communities in the Southern California basin, Rancho Cucamonga, the High Desert in Apple Valley, Victorville, and Hesperia and Las Vegas in Southern Nevada.

I. BACKGROUND

Petitioner DXE is a wholly-owned indirect subsidiary of Brightline Holdings LLC (“Brightline”).¹

A. The Las Vegas – Victor Valley Line

In *DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction and Operation Exemption—In Victorville, Cal. and Las Vegas, Nev.*, STB Docket No. 35544 (STB served Oct. 25, 2011) (the “2011 Decision”), the Board exempted from the prior approval requirements of 49 U.S.C. § 10901 DXE’s proposal to construct and operate an approximately 190-mile high-speed passenger rail line between Las Vegas, NV and Victorville, CA (the “LVVV Line”). The Board found that the LVVV Line would promote the national transportation policy by “providing additional transportation options and alleviating automobile congestion on the I-15 freeway, while also reducing air pollution and overall fuel consumption.”² The Board noted further that the LVVV Line “is expected to have a projected multi-billion dollar beneficial impact on the economies of both Nevada and California.”³ Based on those findings with respect to the transportation merits of the project, the Board granted the exemption, concluding that

¹ On September 17, 2018, DXE’s ownership group entered into an agreement to sell the company to Brightline Holdings LLC (formerly Virgin Trains US LLC). *See Fortress Investment Group LLC – Continuance in Control – Central Maine & Quebec Railway US LLC, Ohio River Partners Shareholder LLC and DesertXpress Enterprises LLC*, STB Finance Docket No. 36225 (STB served Oct. 11, 2018). Brightline’s acquisition of DXE was consummated on March 4, 2019. Another Brightline subsidiary, Brightline Trains Florida LLC, operates express passenger rail service between Miami and West Palm Beach, FL, and is constructing an extended line between West Palm Beach and Orlando, FL.

² *2011 Decision* at 3.

³ *Id.*

formal regulation of the LVVV Line was not necessary to carry out the rail transportation policy or to protect shippers from an abuse of market power.⁴

The LVVV Line was the subject of a lengthy and comprehensive NEPA review.⁵ FRA served as lead agency and the Board participated as a cooperating agency through its Office of Environmental Analysis (“OEA”).⁶ “In its role as a cooperating agency, the Board provided its expertise in rail transportation and independently assessed the environmental analysis to ensure that the Board met its NEPA responsibilities.”⁷ Other Federal and State governmental agencies, including the Bureau of Land Management, Federal Highway Administration, Federal Aviation Administration, Environmental Protection Agency, National Park Service, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Advisory Council on Historic Preservation, Native American Heritage Commission, and the Departments of Transportation and Offices of Historic Preservation of both California and Nevada, participated actively in the NEPA process.⁸

Based on that extensive environmental review, FRA issued a Record of Decision (“ROD”) approving the LVVV Line project on July 8, 2011.

On March 27, 2019, DXE petitioned the Board pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4 to reopen the *2011 Decision* for the purpose of modifying a condition that requires DXE to construct the LVVV Line along the Side Running Alignment specified in the July 8, 2011 ROD. As DXE explained, DXE proposes to adopt a modified alignment located primarily within the I-15 right-of-way (the “Median Alignment”). The Median Alignment will

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 5, n.8.

significantly reduce the number and length of required track structures, resulting in a substantial reduction in construction costs. It will also reduce the environmental impact of building the LVVV Line by utilizing land within the I-15 right-of-way that has already been disturbed by highway construction. FRA, with cooperating agencies BLM, FHWA and OEA, conducted an extensive reevaluation of the EIS and ROD in light of the proposed modifications and determined that a supplemental EIS was not required.⁹ OEA agreed that “FRA’s reevaluation adequately assesses the potential environmental impacts associated with DesertXpress’ project modifications and [OEA] concurs with FRA’s determination that a supplemental EIS is not necessary.”¹⁰ The Board’s *December 2020 Decision* provided a 20-day period for interested parties to comment on OEA’s findings; no comments were filed. DXE’s Petition to Reopen the *2011 Decision* is currently pending before the Board.

B. The VVRC Line

The proposed VVRC Line will extend from a point of connection with the southern terminus of the LVVV Line at the Victor Valley station to Rancho Cucamonga, CA, a distance of approximately 50 miles. The line will traverse the communities of Victorville, Hesperia, Fontana and Rancho Cucamonga, all in San Bernardino County, CA.¹¹ The VVRC Line will consist of a single main line track with passing sidings and will be built and operated on a dedicated, fully grade separated, secure right-of-way with no at-grade crossings.¹²

⁹ See Exhibit 2, Letter dated September 9, 2020 from Jamie P. Rennert, Director, FRA Office of Infrastructure Investment to Husein Cumber.

¹⁰ See *DesertXpress Enterprises, LLC and DesertXpress HSR Corp.—Construction and Operation Exemption—In Victorville, Cal. and Las Vegas, Nev.*, STB Docket No. 35544 (STB served December 3, 2020) (“*December 2020 Decision*”) at 2.

¹¹ Maps depicting the VVRC Line and the entire proposed line between Las Vegas, NV and Rancho Cucamonga, CA are set forth in Exhibit 1.

¹² See Verified Statement of Sarah Watterson at 1-2.

1. Alignment and Facilities

The VVRC Line's alignment will be entirely within the I-15 right-of-way with the exception of 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.¹³

A parking facility adjacent to the Rancho Cucamonga station will provide secure parking for DXE passengers. DXE will construct a new substation to deliver power to the VVRC Line. A small facility to support maintenance activities will be located adjacent to the Rancho Cucamonga station. An additional DXE station in Hesperia, CA (south of Victorville) is also planned.¹⁴

The VVRC Line will provide direct connectivity to Metrolink train service at the Rancho Cucamonga station. Metrolink's San Bernardino Line provides rail service from Rancho Cucamonga to Los Angeles Union Station and beyond to other points in Riverside, Orange, Los Angeles, San Bernardino and Ventura counties. In September 2020, DXE entered into a Memorandum of Understanding with Metrolink pursuant to which the parties will coordinate their planning for future train services and schedules. By optimizing the arrival and departure times of their respective trains serving Rancho Cucamonga, DXE and Metrolink will be able to offer a coordinated all-rail option for travel between Las Vegas and points throughout the greater Los Angeles, Orange and San Bernardino County metropolitan areas.¹⁵

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

DXE's Rancho Cucamonga station will link DXE's train services with the passenger services operated by Metrolink and the bus rapid transit system. In February 2021, the San Bernardino County Transportation Authority's ("SBCTA's") board voted to begin negotiating a contract with the Boring Company to develop a medium density tunnel connector to Ontario International Airport.¹⁶ These existing and proposed facilities will enable passengers to access DXE's train service via rail, automobile, rideshare service, taxi, bus or air.

2. Ridership and Revenue

The VVRC Line is forecasted to attract approximately 1.5 million additional passengers to DXE's train service by the third year of revenue operations (2027).¹⁷ Travelers on the VVRC Line will include both passengers traveling between Las Vegas and Southern California and passengers traveling between the Victor Valley and Rancho Cucamonga stations. Service between Victor Valley and Rancho Cucamonga, which is expected to attract more than half a million riders annually by Year 2, will connect passengers traveling between the Victor Valley and the mobility network available at the Rancho Cucamonga station, alleviating automobile traffic through the congested Cajon Pass. Additionally, the VVRC Line is expected to double the number of westbound passengers who choose DXE's train service for their travel from Las Vegas to Southern California.¹⁸

In total, by 2035, the DXE train service is expected to carry more than 13 million one-way riders, representing approximately 20% of all trips between Las Vegas and Southern

¹⁶ See <https://www.masstransitmag.com/infrastructure/press-release/21208883/san-bernardino-county-transportation-authority-sbcta-sbeta-board-to-begin-negotiating-with-the-boring-company-on-the-ontario-loop-project>.

¹⁷ Source: Brightline ridership study for the VVRC Line (2020).

¹⁸ See Verified Statement of Sarah Watterson at 3-4.

California. By comparison, Amtrak’s Northeast Corridor train service (both Acela and conventional speed trains) transports 27% of all travelers in that corridor. The high-speed train network operated by Italo in Italy currently carries approximately 23% of total travelers in the corridors that it serves.¹⁹ These comparable systems capturing between 20-30% of the travelers in their respective markets provide a strong benchmark to the ridership projections for DXE’s service between Southern California and Las Vegas.

3. Service Schedule and Transit Time

DXE currently plans to operate 50 trains per day (25 in each direction) between Las Vegas and Rancho Cucamonga. Trains will depart from both Las Vegas and Rancho Cucamonga at 45 minute intervals. The first trains will depart Rancho Cucamonga and Las Vegas at 5:30am with the final trains arriving in Rancho Cucamonga and Las Vegas at approximately 11:30 pm and 1:00 am, respectively. Trains will operate at speeds up to 180 MPH, enabling DXE to achieve a transit time of approximately 40 minutes between Rancho Cucamonga and Victor Valley, and 2 hours and 15 minutes (including station stops) between Rancho Cucamonga and Las Vegas.²⁰ By contrast, automobile travel between Rancho Cucamonga and Las Vegas via the congested I-15 corridor and Cajon Pass requires a journey of four hours (and frequently longer during peak traffic periods, bad weather and as a result of accidents along the route).

4. Passenger Experience

The success of any new transportation service depends largely on the “passenger experience” that travelers enjoy during (and prior to) their journey. DXE’s high-speed train service will be more convenient and reliable than travel by automobile or air. Traveling via

¹⁹ Source: Brightline ridership studies for the LVVV Line (2019) and VVRC Line (2020).

²⁰ See Verified Statement of Sarah Watterson at 2-3.

Brightline's fully electric, zero-emission trainsets will enable passengers to choose a green alternative that avoids the unpredictable reliability of air travel and the frequent construction delays on California's crowded highways.

DXE's scheduled transit times will be more reliable than air or travel. DXE will operate on a dedicated rail corridor with no conflicting train movements. Train service is largely unaffected by conditions such as bad weather and terminal delays at busy airports, which can wreak havoc with the airlines' on-time performance.

Automobile travel between Los Angeles and Las Vegas via I-15 is likewise subject to frequent delays and inconvenience. The highway experiences massive congestion on weekends, as southern California travelers journey to Las Vegas and Nevada residents visit the Los Angeles area. During such peak periods, travel time on I-15 can be 7 hours or more.²¹ Even on weekdays, motorists traveling between Los Angeles and the rapidly expanding suburbs in the Victor Valley incur significant delays due to congestion along the portion of I-15 through the Cajon Pass.

Moreover, I-15 has long been considered one of the most dangerous highways in California.²² In particular, the segments of I-15 traversing the Cajon Pass, the approach to Victorville, and between Baker and Mountain Pass, CA experience a high number of motor vehicle accidents and fatalities each year.²³ DXE's high-speed train service will offer a safer, less stressful alternative to automobile travel via I-15. Travelers will be able to purchase tickets online or in-person at DXE stations. Assigned seating will enable passengers to choose their preferred seat location in advance, ensuring a stress-free boarding process. DXE passengers will

²¹ See Vegas.com/traveltips/top-10-tips-for-driving-from-la-to-vegas.

²² See *I-15 stretch is deadliest road in US*, Desert News, February 26, 2010.

²³ See *The Deadliest Highway Stretches in California*, www.psblaw.com.

be able to bring their luggage on-board, eliminating lost bags and waiting time at airport baggage claim areas. DXE will offer food and beverage service and Wi-Fi to make the journey productive and relaxing. DXE plans to work with Las Vegas resorts to develop amenities that will enable passengers to bypass busy weekend hotel check-in lines by registering electronically while on the train and to have their luggage transported from DXE's Las Vegas station directly to their hotel room. DXE also envisions offering passengers "last-mile connectivity" via a private shuttle service from Las Vegas station to major resorts.²⁴

5. Economic Benefits

The VVRC Line will generate substantial economic benefits for the State of California. The VVRC Line alone will create more than 10,000 jobs during the anticipated three-year construction phase. Building both the LVVV and VVRC lines will create a total of 40,000 construction jobs. When high-speed train service is initiated, DXE's rail operations will create approximately 1,000 permanent jobs. In addition to these job creation benefits, DXE estimates that the VVRC Line alone will generate \$3 billion in positive economic impacts. Collectively, the LVVV Line and VVRC Line will generate positive economic impacts of approximately \$9 billion and produce more than \$1 billion in total tax revenues at the federal, state and local levels during construction estimated as follows: federal at \$675M, state at \$200M, and local at \$125M. During operations, tax revenue is estimated to be \$25M per year of which \$17M is federal, \$5M is state and \$3M is local revenue.²⁵

²⁴ See Verified Statement of Sarah Watterson at 3.

²⁵ *Id.* at 4.

6. Environmental Benefits

DXE initiated consultation with both FRA and OEA during 2020 regarding the environmental review process for the VVRC Line. In order to comply with 49 C.F.R. § 1105.6, an Environmental Assessment (“EA”) of the proposed VVRC Line will be conducted. FRA will serve as lead agency in preparing the EA for the VVRC Line. OEA previously collaborated with FRA in reviewing the environmental impacts of the LVVV Line and the proposed modifications to the alignment of that line. DXE believes that a similar approach is appropriate with respect to OEA’s environmental review of the VVRC Line.²⁶

The VVRC Line will have a decidedly positive environmental impact. DXE’s proposed high-speed train service represents a safer and more environmentally friendly transportation alternative than air travel or driving on the increasingly congested I-15 highway corridor. The VVRC Line will significantly reduce the number of vehicles traveling the length of I-15 between Rancho Cucamonga and the Victor Valley over the Cajon Pass, where frequent accidents occur. The complete DXE Line is expected to reduce automobile travel by more than 850 million miles by 2035, with more than 40% of that reduction attributable to the VVRC Line. This reduction in cars and overall vehicle miles traveled due to the availability of DXE’s train service will help to relieve congestion on the roadway network in Southern California. Overall, the diversion of automobile and air passengers to high-speed rail travel between Southern California and Las Vegas will reduce carbon emissions by 400,000 tons annually (of which 100,000 tons is directly attributable to the VVRC Line), remove more than three million cars from a stressed road system

²⁶ See *2011 Decision* at 4, n.6 (noting that FRA was lead agency in environmental review “because it has some jurisdiction and expertise related to high-speed train operations and railroad safety.”)

and improve travel safety by reducing the number of automobile accidents, a leading cause of death in the U.S.²⁷

Construction of the VVRC Line will be accomplished with minimal environmental impacts. The proposed alignment for the VVRC Line (and modified alignment of the LVVV Line recently approved by FRA) will be located within the existing I-15 right-of-way that has already been disturbed by previous highway construction, substantially reducing new environmental impacts during construction. Any potential adverse impacts generated during construction of the VVRC Line will be far outweighed by the major environmental, health, safety and transportation benefits of creating an all-rail transportation option linking Las Vegas with the greater Los Angeles metropolitan area.

7. Construction Schedule and Financing

DXE plans to commence construction of the VVRC Line as soon as practicable following approval of this Petition for Exemption and completion of the required Environmental Assessment (“EA”). DXE plans to initiate high-speed rail service between Las Vegas and Rancho Cucamonga in 2025.

The estimated cost of constructing the VVRC Line is approximately \$2 billion. Brightline plans to finance the VVRC Line in a manner similar to the financing of the LVVV Line and Brightline’s Florida passenger rail line, with a blend of tax-exempt bonds, taxable debt and equity.²⁸

²⁷ See Verified Statement of Sarah Watterson at 4-5.

²⁸ *Id.* at 5.

II. THE BOARD SHOULD EXEMPT THE CONSTRUCTION AND OPERATION OF THE VVRC LINE FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. § 10901.

The construction and operation of a new railroad line is subject to the prior approval requirements of 49 U.S.C. § 10901. However, the Board has observed that:

Under Section 10502(a) we *must* exempt a proposed rail line construction from the detailed application procedures of § 10901 when we find that those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) the full application procedures are not necessary to protect shippers from the abuse of market power.²⁹

Congress has mandated that the Board exercise its exemption authority “to the maximum extent consistent with [ICCTA].” 49 U.S.C. § 10502(a).³⁰

Likewise, Section 10901(c) itself “directs the Board to grant rail construction proposals unless it finds the proposal ‘inconsistent with the public convenience and necessity.’”³¹ The Board has acknowledged that this legal standard, which was enacted as part of ICCTA in 1995,

²⁹ *2011 Decision* at 3 (emphasis added).

³⁰ *See, e.g., American Trucking Associations v. ICC*, 656 F.2d 1115, 1119 (5th Cir. 1981) (explaining that the ICC was charged with the responsibility of actively pursuing exemptions for transportation and services that comply with the section's standards); H.R. Rep. No. 96-1430, at 105 (1980) (House Report on Staggers Act explaining that the ICC was charged with removing “as many as possible of the Commission’s restrictions”).

³¹ *Ken Tenn Regional Rail Partners, Inc. – Construction & Operation Exemption – In Fulton County, KY and Obion County, Tenn*, Finance Docket No 36328 (STB served December 1, 2020) at 3. *See also 2011 Decision* at 3; *Alaska Railroad Corp. – Construction and Operation Exemption – A Rail Line Extension to Port MacKenzie, Alaska*, Finance Docket No. 35095 (STB served November 21, 2011) at 5, *aff’d sub nom Alaska Survival v STB*, 705 F.3d 1073 (9th Cir. 2013).

establishes a statutory presumption that rail construction projects are in the public interest and should be approved.³² As the Board has explained:

[I]n enacting the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, ***Congress intended to facilitate rail construction*** by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to ***requiring approval unless the agency finds the project is inconsistent with the PC&N.*** Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.³³

The proposed construction and operation of the VVRC Line clearly satisfies the standards for exemption under Section 10502.

A. An Exemption Will Promote The Rail Transportation Policy.

There is no question that construction of the extended VVRC Line, and the enhanced rail transportation services that it will make possible, are consistent with both the Rail Transportation Policy (“RTP”) set forth in 49 U.S.C. § 10101 and with current federal policy encouraging the development of high-speed passenger rail service in the United States.

Granting DXE’s request for an exemption from Section 10901 to build the VVRC Line will promote the RTP in multiple ways:

First, the VVRC 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, to meet the needs of the general public.*” 49 U.S.C. § 10101(4). In the 2011 Decision (at 3), the

³² See *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996) (“Thus, there is now a presumption that construction projects will be approved.”). See also 2011 Decision at 3; *Northern Plains Resource Council, Inc. v. STB*, 668 F.3d 1067, 1089-92 (9th Cir. 2011) (affirming Board's interpretation of § 10901 finding a presumption that new construction should be approved).

³³ *The Burlington Northern & Santa Fe Ry. Co. - Construction and Operation Exemption - Seadrift and Kamey, TX*, Finance Docket 34003, at 4 (STB June 19, 2001) (emphasis added).

Board found that the LVVV Line will promote this element of the RTP by “providing additional transportation options and alleviating automobile congestion on the I-15 freeway.” Extending DXE’s train service south to Rancho Cucamonga will amplify the transportation benefits of the previously-approved LVVV Line by establishing a direct connection with Metrolink’s train service, thereby creating a seamless all-rail option for travel between Las Vegas and points throughout the greater Los Angeles, Orange County and San Bernardino metropolitan areas. Brightline’s ridership study forecasts that the VVRC Line will attract an additional 1.5 million passengers annually and divert passengers away from less safe and more environmentally damaging modes of travel.

The VVRC Line will likewise promote the policy goal articulated in FRA’s *National Rail Plan* to “connect communities with High-Speed and Intercity Passenger Rail where population densities and competitive trip times create markets for success.”³⁴ The *National Rail Plan* envisions the development of “a modern, high-speed and interconnected rail system that will support sustained economic growth, move people and goods with greater speed and efficiency, relieve growing congestion, and provide another choice for the public’s mobility needs.”³⁵ The VVRC Line will promote these policy objectives, respond to the heightened public awareness of the effects of climate change, and stimulate the California economy.

Thus, the VVRC Line will promote the RTP policy encouraging the development of a “sound rail transportation system to meet the needs of the general public” for the 21st century.”

³⁴ See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 9.

³⁵ *Id.* at 2 (statement of Transportation Secretary LaHood).

Second, the VVRC Line will “*foster sound economic conditions in transportation and . . . ensure effective competition and coordination between rail carriers and other modes [of transportation].*” 49 U.S.C. § 10101(5). In the 2011 Decision (at 3), the Board found that the LVVV Line will promote this element of the RTP by “alleviat[ing] constraints on the expansion of air travel in Southern California” and “hav[ing] a projected multi-billion dollar beneficial impact on the economies of both Nevada and California.” The VVRC Line will augment the positive economic impacts of the LVVV Line. As discussed above (at 9), the VVRC Line will create more than 10,000 new construction jobs, contribute to the 1,000 permanent jobs required to operate the LVVV Line upon initiation of service, and generate \$3 billion in positive economic impacts. Development of DXE’s station as part of SBCTA’s planned multi-modal transit hub at Rancho Cucamonga will create additional employment opportunities for that community. Overall, the DXE Line is projected to require approximately \$7 billion in capital investment and generate total positive economic impacts of approximately \$9 billion. Moreover, a high-speed rail connection between Los Angeles and Las Vegas will improve the productivity of business travelers by creating a faster, more convenient and more reliable alternative to travel by automobile or air. As FRA observes in the *National Rail Plan*, “[b]eyond these direct economic effects, high-speed rail could also have a significant influence on the nature of many regional economies. These benefits will come from: (1) added economic output; (2) earnings associated with new jobs; and (3) efficiency gains (including land use efficiencies).”³⁶

Third, the VVRC Line will “*encourage and promote energy conservation.*” 49 U.S.C. § 10101(14). In the 2011 Decision (at 4), the Board concluded that “[a]n exemption [for

³⁶ See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 13.

construction and operation of the [LVVV Line] will also promote energy conservation as the Line will divert automobile and air traffic, and reduce congestion and air pollution, consistent with the goal of 49 U.S.C. § 10101(14).” Extending DXE train service to Rancho Cucamonga will conserve more energy and further reduce emissions by diverting additional cars off the busy highways between the Los Angeles metropolitan area, Rancho Cucamonga and Las Vegas. Indeed, Brightline’s ridership study found that constructing the VVRC Line would induce twice as many westbound travelers to choose DXE train service over automobile or air travel.³⁷ Overall, the DXE Line will remove more than 3 million cars from the highway and eliminate more than 850 million vehicle miles traveled annually. This will, in turn, result in a substantial reduction in greenhouse gas emissions. In its *National Rail Plan*, FRA found that travel by train is likewise more fuel efficient than air travel, consuming 20% fewer BTUs per passenger mile than air service.³⁸ DXE’s plan to locate the VVRC Line within the existing I-15 right-of-way will minimize any adverse environmental impacts of construction by utilizing land that has already been disturbed by previous highway construction.

The proposed VVRC Line responds to the heightened public awareness of the harmful effects of climate change by creating (in conjunction with Metrolink) a safe, reliable and environmentally friendly all-rail transportation alternative to air travel or driving along the increasingly congested I-15 highway corridor.

Fourth, granting Petitioners’ request for an exemption will “*minimize the need for Federal regulatory control over the rail transportation system*” (49 U.S.C. § 10101(2)) by avoiding the time and expense of a formal application process for a project that is manifestly

³⁷ See Verified Statement of Sarah Watterson at 4-5.

³⁸ See United States Department of Transportation, Federal Railroad Administration, *National Rail Plan: Moving Forward* (September 2010) at 8, Figure 5.

consistent with the RTP, the *National Rail Plan* and federal transportation and environmental policy. The VVRC Line will enhance the public benefits of a high-speed passenger rail project (the LVVV Line) that the Board previously exempted in the *2011 Decision*. No legitimate policy objective would be served by requiring a lengthy application and approval process for the VVRC Line.

Subjecting the VVRC Line to a protracted application process would be contrary to the RTP policy of “foster[ing] sound economic conditions in transportation.”³⁹ DXE anticipates that the LVVV Line and the VVRC Line will be built by the same primary contractors. Construction of the LVVV Line is scheduled to commence in 2021 (assuming that the Board grants DXE’s pending request to modify the alignment of that section, as approved by FRA). Coordinating construction of the two projects will result in lower costs, a shorter overall construction period, and earlier commencement of DXE’s safe, convenient and environmentally friendly high-speed train service.

Fifth, granting the requested exemption will 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)). An exemption will minimize the time and administrative expense associated with DXE’s proposal, and enable it to introduce an exciting new transportation option to millions of travelers sooner than would be possible if a formal application proceeding under Section 10901 were required. In amending the standard for approval under Section 10901, Congress made clear its intent that regulatory barriers to the

³⁹ 49 U.S.C. § 10101(5).

construction of additional rail capacity should be minimized whenever possible in order to promote new transportation options like the VVRC Line.

In short, the findings underlying the Board’s exemption of the LVVV Line in the *2011 Decision* apply with equal – if not greater – validity with respect to the extended VVRC Line. Granting the requested exemption will promote the goals of the RTP, the *National Rail Plan* and Federal transportation and environmental policy objectives, without generating any effects that would be inconsistent with those policies.

B. Regulation Of The VVRC Line Is Not Needed To Protect Shippers From The Abuse Of Market Power.

The second element of Section 10502’s standard for granting an exemption is stated in the alternative: either “*the transaction or service is of limited scope*” or formal regulation of the transaction or service “*is not needed to protect shippers from the abuse of market power.*”⁴⁰ The proposed construction and operation of the VVRC Line clearly satisfies the latter test.

Regulation of the VVRC Line is not necessary to protect freight shippers from an abuse of market power. The VVRC Line will be dedicated exclusively to high-speed passenger train service, and DXE will not conduct any freight transportation over the line. No freight shipper will lose access to an existing rail option as a result of the construction and operation of the VVRC Line.⁴¹

Nor will the VVRC Line pose a competitive threat to rail passengers. To the contrary, upon commencement of DXE service, the public will – for the first time – have access to a safe and efficient rail option for travel between Las Vegas and the Los Angeles metropolitan area. DXE’s train service will face competition from multiple airlines that serve the Las Vegas –

⁴⁰ 49 U.S.C. § 10502(a)(2).

⁴¹ *See 2011 Decision* at 4.

Southern California travel market, and passengers will continue to have the option to travel by automobile via I-15.

In short, the VVRC Line will *enhance* the competitive options available to the traveling public by introducing a safe, convenient, reliable, comfortable and environmentally beneficial rail service in the Las Vegas – Southern California corridor.⁴² Nevertheless, DXE anticipates that approximately 80% of all travelers will continue to utilize the automobile or air modes for their journey between Las Vegas and the Los Angeles metropolitan area. Therefore, construction and operation of the VVRC Line will not result in, or enable, any abuse of market power.

Accordingly, the Board should grant DXE an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate the VVRC Line.⁴³

⁴² See *2011 Decision* at 3 (approving exemption for new passenger line that would “provid[e] additional transportation options”); *Southwest Gulf R.R. Co. – Construction and Operation Exemption – Medina County, TX*, Finance Docket No. 34284 (STB served May 19, 2003) at 3 (concluding that “the proposed transaction will enhance competition by providing . . . a rail transportation option to go along with existing motor carrier options”).

⁴³ Because regulation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the VVRC Line is a project of limited scope. See, e.g., *2011 Decision* at 4, n.5 (“Given our finding under 49 U.S.C. § 10502(a)(2)(B) regarding the probable effect of the proposed Line on market power, we need not determine under 49 U.S.C. § 10502(a)(2)(A) whether the transaction is limited in scope.”); *Missouri Pacific R.R. Co – Construction and Operation Exemption – Harris and Chambers Counties, TX*, Finance Docket No. 32571 (STB served June 30, 1995), 1995 WL 385792 at *4 (“The transaction appears to be of limited scope . . . but we need not make that finding here because regulation is not necessary to protect shippers from market power abuse”).

CONCLUSION

For the foregoing reasons, DXE respectfully requests that the Board grant this Petition and issue a decision exempting the construction and operation of the VVRC Line from the prior approval requirements of 49 U.S.C. § 10901.

Respectfully submitted,



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Counsel to DesertXpress Enterprises, LLC

Dated: April 13, 2021

**VERIFIED STATEMENT
OF
SARAH WATTERSON**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36488

**DESERTXPRESS ENTERPRISES, LLC—AUTHORITY TO CONSTRUCT AND
OPERATE— PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 – PASSENGER
RAIL LINE BETWEEN VICTOR VALLEY AND RANCHO CUCAMONGA, CA**

VERIFIED STATEMENT OF SARAH WATTERSON

My name is Sarah Watterson. I am President of DesertXpress Enterprises, LLC (“DXE”). My business address is 6700 Via Austi Parkway, Suite B, Las Vegas, Nevada 89119.

The purpose of this Verified Statement is to describe DXE’s proposal to construct and operate an extended high-speed passenger rail line between Victor Valley and Rancho Cucamonga, CA (the “VVRC Line”). As my testimony demonstrates, the VVRC Line will offer a safe, reliable, convenient and environmentally friendly rail travel option serving Southern California communities. Moreover, in conjunction with DXE’s previously approved Las Vegas - Victorville high speed rail line (the “LVVV Line”) and conventional passenger rail service operated by Metrolink, the VVRC Line will create the first through passenger rail service connecting the greater Los Angeles metropolitan area and Las Vegas, NV.

The VVRC Line will be approximately 50 miles in length, extending from a connection with the LVVV Line at DXE’s Victor Valley station to Rancho Cucamonga, CA. The VVRC Line will traverse the San Bernardino County communities of Victorville, Hesperia, Fontana and Rancho Cucamonga, with a planned intermediate station at Hesperia. The line will be built and operated on a dedicated, fully grade separated, secure right-of-way with no at-grade crossings. The VVRC Line will consist of a single main line track with passing sidings, and will be

dedicated exclusively to high-speed passenger service; no freight rail service will be operated on the line.

The proposed alignment of the VVRC Line lies almost entirely within the Interstate 15 (“I-15”) right-of-way. Only the final mile at Rancho Cucamonga will exit the I-15 right-of-way, extending west along 8th Street and terminating adjacent to Metrolink’s Rancho Cucamonga station on the south side of 8th Street west of Milliken Avenue. In addition to a high-speed rail station, DXE plans to construct a small facility at Rancho Cucamonga to support line maintenance activities and a new substation to deliver power to the VVRC Line. A new parking facility at Rancho Cucamonga will offer secure parking for DXE passengers.

A major benefit of the extended VVRC Line is the connectivity it will create with Metrolink at Rancho Cucamonga. Metrolink provides rail service via its San Bernardino Line between Rancho Cucamonga and Los Angeles Union Station, where passengers can connect to other Metrolink trains serving points in Riverside, Orange, Los Angeles, San Bernardino and Ventura Counties. In September 2020, DXE entered into a Memorandum of Understanding with Metrolink under which we will coordinate our respective train services and schedules serving Rancho Cucamonga. The goal of this arrangement is to create a coordinated all-rail transportation option for travel between Las Vegas and points throughout Metrolink’s Southern California rail network (via a connection at Rancho Cucamonga).

DXE plans to operate 25 train departures per day from both Las Vegas and Rancho Cucamonga, at 45-minute intervals. The first daily trains will depart Rancho Cucamonga and Las Vegas at 5:30 am. The last daily westbound train will arrive in Rancho Cucamonga at approximately 11:30 pm, while the final eastbound train will arrive in Las Vegas at approximately 1:00 am. DXE trains will operate at speeds up to 180 MPH, enabling us to

achieve transit times of approximately 40 minutes between Rancho Cucamonga and Victor Valley, and 2 hours and 15 minutes (including station stops) between Rancho Cucamonga and Las Vegas.

DXE's high-speed train service will be more reliable than travel by automobile or air. DXE will operate on a dedicated rail corridor with no conflicting movements. Train operations are largely unaffected by conditions that generate significant delays for air or highway travelers, including bad weather, traffic congestion and terminal delays at busy airports.

DXE's environmentally friendly train service will offer a safe, convenient and stress-free travel experience. Our 50 daily departures will give travelers flexibility in planning their trip. Passengers will be able to purchase tickets and choose an assigned seat online or in-person at DXE stations. Available food and beverage service and free Wi-Fi will make the journey productive and relaxing. DXE passengers will be permitted to bring their luggage on-board, eliminating the inconvenience of lost bags and waiting time at airport baggage claim areas. DXE plans to develop other amenities in conjunction with major Las Vegas resorts that will further enhance the "DesertXpress passenger experience," including electronic hotel check-in while on the train, a private shuttle service between DXE's Las Vegas station and destination hotels, and the option to have luggage delivered directly from the train to travelers' hotel rooms.

Brightline's ridership study forecasts that the VVRC Line will attract approximately 1.5 million additional passengers to DXE's train service by the third year of revenue operations (2027). Service between Victor Valley and Rancho Cucamonga will enable passengers to travel entirely by rail between the rapidly growing Victor Valley communities and the greater Los Angeles metropolitan area via connecting Metrolink service at the Rancho Cucamonga station, avoiding the need to drive on I-15 through the congested Cajon Pass. Brightline's ridership study

projects that more than half a million riders annually will utilize this DXE service by Year 2. Construction of the VVRC Line is also forecast to double the number of westbound passengers who choose DXE train service for travel from Las Vegas to Southern California. By 2035, DXE expects to attract more than 13 million one-way riders, approximately 20% of all trips between Las Vegas and Southern California.

The VVRC Line will generate substantial economic benefits for the State of California. The VVRC Line alone will create more than 10,000 jobs during the anticipated three-year construction phase. (Construction of both the VVRC and LVVV Lines will create a total of 40,000 construction jobs in California and Nevada.) When high-speed train service is initiated, DXE's rail operations will employ approximately 1,000 persons.

In addition to these employment-related benefits, DXE estimates that the VVRC Line will generate \$3 billion in positive economic impacts. (Collectively, the LVVV Line and VVRC Line will generate economic benefits totaling approximately \$9 billion.) The project will also generate more than \$1 billion in tax revenues during the construction phase, consisting of approximately \$675 million in Federal taxes, \$200 million in State taxes and \$125 million in local tax revenues. Upon commencement of operations, the project will generate an estimated \$25 million in annual tax revenues, including \$17 million per year in Federal taxes, \$5 million per year in State tax revenues, and \$3 million in tax revenues at the local level.

The VVRC Line will also produce substantial environmental benefits. DXE estimates that its high-speed train service will remove more than three million cars per year from California's crowded highway network and reduce automobile travel by more than 850 million vehicle miles by 2035. More than 40% of that total (more than 340 million vehicle miles) is attributable to the construction and operation of the extended VVRC Line. DXE estimates that

diverting passengers from automobiles and airplanes to DXE's high-speed rail service will reduce carbon emissions by 400,000 tons annually (of which 100,000 tons is attributable to the VVRC Line). At the same time, the VVRC Line can be constructed with minimal adverse environmental impacts because the proposed alignment will utilize a highway right-of-way that has already been disturbed by previous construction.

The estimated cost of constructing the VVRC Line is approximately \$2 billion. Brightline plans to finance the VVRC Line in a manner similar to the financing of the LVVV Line and Brightline's Florida passenger rail line, with a blend of tax-exempt bonds, taxable debt and equity.

In summary, the VVRC Line will create a safe, reliable, convenient and environmentally friendly new transportation option for travel both within Southern California and (in conjunction with the LVVV Line and Metrolink) between Southern California and Las Vegas. The VVRC Line will help to relieve congestion on California's crowded highways, create substantial job opportunities, and generate billions of dollars in economic benefits and tax revenues for the State. DXE's proposed high-speed passenger rail service will conserve energy and reduce greenhouse gas emissions in both Southern California and the Las Vegas area.

On behalf of DXE, I respectfully request that the Board grant our Petition for Exemption, so that DXE can introduce this exciting new transportation option to the millions of passengers who travel between Southern California and Las Vegas.

VERIFICATION

I, Sarah Watterson, President of DesertXpress Enterprises, LLC ("DXE") declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement and to sponsor DXE's Petition for Exemption.

Executed on: March 31, 2021.


Sarah Watterson

EXHIBIT 1
MAPS

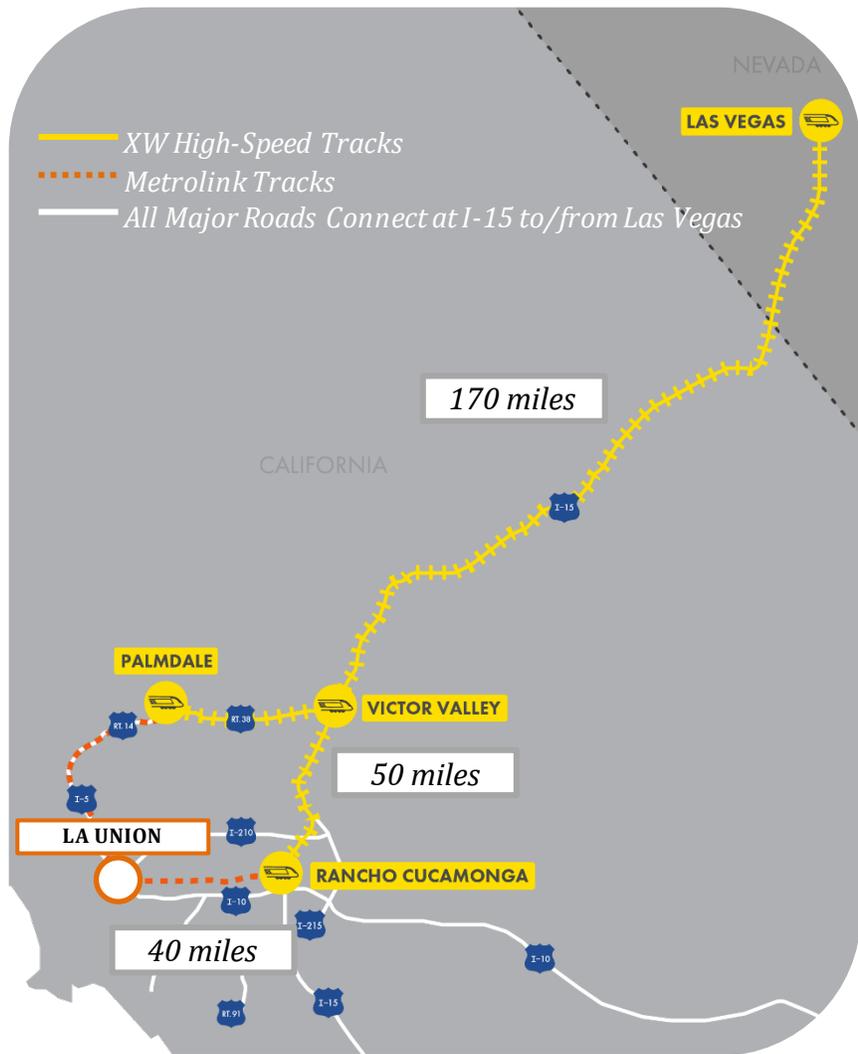




EXHIBIT 2



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 9, 2020

Mr. Husein Cumber
Florida East Coast Industries
2002 San Marco Boulevard
Suite 202
Jacksonville, FL 32207

Dear Mr. Cumber:

The purpose of this letter is to inform you that the Federal Railroad Administration (FRA) has completed its reevaluation of the 2011 DesertXpress High-Speed Passenger Train Final Impact Statement (EIS) and Record of Decision (ROD). FRA initiated this reevaluation in the Spring of 2019 after Xpresswest proposed certain modifications to the project FRA evaluated in the 2011 EIS. After conducting the appropriate analysis and coordinating with Federal and state agency partners, we have determined a supplemental EIS is not required. This concludes FRA's reevaluation of the 2011 EIS and ROD.

If you have additional questions relating to the reevaluation, please contact Stephanie Perez, Supervisory Environmental Protection Specialist at stephanie.perez@dot.gov or at 202-493-0388.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Rennert".

Jamie P. Rennert
Director, Office of Infrastructure Investment

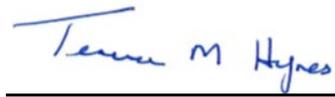
Certificate of Service

I certify that on April 13, 2021, I served one copy of the DXE Rancho Extension Petition to the parties of record, listed below, by U.S. Mail, first class.

Governor Gavin Newsom
1303 10th Street
Suite 1173
Sacramento, CA 95814

David S. Kim
Secretary
California State Transportation Agency
915 Capitol Mall
Suite 350 B
Sacramento, CA 95814

Hon. Toks Omishakin
Director
California Department of Transportation
1120 N. Street
Sacramento, CA 95814



Terence M. Hynes