

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of DesertXpress Enterprises, LLC dba Brightline West (formerly dba XpressWest) to construct proposed high-speed tracks under the following public road crossings: Afton Road (MP 108.34), Basin Road (MP 99.52), Rasor Road (MP 95.71), Halloran Springs Road (MP 70.47), Halloran Summit Road (MP 64.50), Cima Road (MP 57.34) and Yates Well Road (MP 38.72).

Application 21-01-007

**DECISION AUTHORIZING DESERTXPRESS ENTERPRISES, LLC, DBA BRIGHTLINE WEST (FORMERLY DBA XPRESSWEST), TO CONSTRUCT SEVEN GRADE-SEPARATED HIGHSPEED TRACKS AND CROSSINGS UNDER THE PUBLIC ROADS IN SAN BERNARDINO COUNTY**

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**DECISION AUTHORIZING DESERTXPRESS ENTERPRISES, LLC, DBA BRIGHTLINE WEST (FORMERLY DBA XPRESSWEST), TO CONSTRUCT SEVEN GRADE-SEPARATED HIGH-SPEED TRACKS AND CROSSINGS UNDER THE PUBLIC ROADS IN SAN BERNARDINO COUNTY**

**Summary**

Pursuant to Public Utilities Code §§ 1201 and 1202, this decision authorizes DesertXpress Enterprises, LLC, dba Brightline West (formerly dba XpressWest), to construct, as part of the planned high-speed passenger rail service between Apple Valley, California and Las Vegas, Nevada, seven grade-separated highway-rail crossings. The newly authorized tracks and crossings will be constructed under seven public roads: Afton Road (Milepost (MP) 108.34), Basin Road (MP 99.52), Rasor Road (MP 95.71), Halloran Springs Road (MP 70.47), Halloran Summit Road (MP 64.50), Cima Road (MP 57.34) and Yates Well Road (MP 38.72).

This proceeding is closed.

**1. Background**

DesertXpress Enterprises, LLC dba Brightline West (DesertXpress) filed the instant application (Application) on January 5, 2021, pursuant to Public Utilities (Pub. Util.) Code §§1201 to 1205 and in accordance with Rules 3.7 and 3.9 of the Commission's Rules<sup>1</sup> and General Orders (GOs) 26-D and 176. Specifically, the Application seeks authority to construct seven new grade-separated highway-rail crossings.

On January 20, 2021, DesertXpress tendered to the Docket Office and served on all parties on the service list an Amended Application for the Proposed Rail Crossing Project which was later filed on February 2, 2022, upon resolution

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<sup>1</sup> All references to Rules are to the Commission's Rules of Practice and Procedure.

of technical filing requirements. On January 26, 2021, DesertXpress filed an Amendments to Application.<sup>2</sup> Hereafter, in this decision, the Amended Application and the Amendments to the Application are collectively referred to as Amended Application. The Amended Application amended the configuration of six of the grade-separated highway-rail crossings from two tracks to single track crossings.<sup>3</sup>

The seven proposed highway-rail crossings would be constructed under the following public roads: Afton Road (Milepost (MP) 108.34), Basin Road (MP 99.52), Rasor Road (MP 95.71), Halloran Springs Road (MP 70.47), Halloran Summit Road (MP 64.50), Cima Road (MP 57.34) and Yates Well Road (MP 38.72) and collectively referred to in this decision as Proposed Crossings.

These Proposed Crossings are part of the larger project to construct electrified high-speed passenger rail tracks for service between Apple Valley, California and Las Vegas, Nevada (Project), which includes construction of approximately 170 miles of track that will be fully grade-separated and operate primarily in the median of Interstate 15 (I-15).

That Project consists of seven (7) segments with Segments 1 through 4 in California and Segments 5 through 7 in Nevada. The Proposed Crossings will be within Segments 3 and 4 from Yermo to Primm.

The Afton Road (MP 108.34), Basin Road (MP 99.52), Rasor Road (MP 95.71), Halloran Springs Road (MP 70.47), Halloran Summit Road (MP 64.50), Cima Road (MP 57.34) crossings (collectively as, the Segment 3 Crossings) are located within Segment 3, from Yermo to Mountain Pass. The

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<sup>2</sup> Due to technical error, the Amendment to the Application was filed on January 26, 2021 and the Amended Application was filed on February 2, 2022.

<sup>3</sup> The Segment 3 Crossings were amended from double to a single track.

Yates Well Road (MP 38.72) crossing is located within Segment 4, from Mountain Pass to Primm.

On February 18, 2021, the Commission's Rail Safety Division (RSD) filed a response to the Amended Application. RSD conducted a site inspection of the locations for the Proposed Crossings on February 26, 2020, reviewed the Amended Application and supporting materials, determined that the Amended Application complies with the applicable Commission GOs and Rules, and recommended approval of the Proposed Crossings.

On March 3, 2021, the California Department of Transportation (Caltrans) filed a response to the Amended Application. No other party filed a response, and no party protested the Application or the Amended Application.

On February 12, 2021, Administrative Law Judge (ALJ) Daphne Lee issued an E-mail Ruling setting the prehearing conference (PHC) for February 26, 2021, and ordering the parties to meet, confer, and submit a Joint PHC Statement prior to the PHC. On February 23, 2021, ALJ reset the PHC to March 30, 2021, and directed the parties to file the Joint PHC Statement by March 26, 2021.

On March 19, 2021, DesertXpress filed the Draft Environmental Impact Statement (DEIS) and the Supplemental Draft Environmental Impact Statement (SDEIS), in response to the ruling issued by ALJ on March 15, 2021.

On March 26, 2021, the parties timely filed a Joint PHC Statement with the Right of Way (ROW) Agreement between Caltrans and DesertXpress and the compact disks of the Final Environmental Impact Statement (FEIS) and the National Environmental Protection Act Reevaluation (Reevaluation). The PHC was held on March 30, 2021, during which, all parties agreed to the proposed issues to be scoped into this proceeding. With respect to the issue on California Environmental Quality Act (CEQA) compliance, DesertXpress noted that the

Commission should consider whether the Proposed Crossings should be considered exempt from CEQA review and expressed a concern for the delay in issuance of proposed decisions for this and prior DesertXpress applications for proposed construction of rail crossings. RSD and Caltrans concurred with DesertXpress on this point.

A Status Conference (STC) was held immediately after the PHC to clarify the ruling issued by the ALJ on March 16, 2021, for DesertXpress to provide its detail plans for the Proposed Crossings. During the STC, the ALJ extended the time to file a response to the ruling to April 5, 2021. DesertXpress timely filed a response.

On July 30, 2021, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo).

On February 11, 2022, the ALJ marked, identified, and admitted into the record (1) the FEIS and the Reevaluation as DXE-A; (2) the ROW Agreement as DXE-B, (3) the DEIS and the SDEIS as DXE-C, and (4) the Detail Plans of the Proposed Crossings as DXE-D, respectively.

Upon consideration of the environmental documents for the underlying Project, of which the Proposed Crossings are a part, and determination that no further information or evidence is needed to adequately inform and evaluate the issues in this proceeding, the ALJ closed the record, and this matter was submitted on February 8, 2022.

## **2. Issues Before the Commission**

The issues to be determined are:

1. Whether the Amended Application complies with all applicable Commission requirements, including those in Rules 3.7 and 3.9 and GOs 26-D and 176, such that the

- Commission should authorize DesertXpress to construct the Proposed Crossings, as proposed;
2. With respect to the Proposed Crossings, whether DesertXpress complied with the CEQA or is otherwise exempt from the requirements of CEQA;
  3. Whether the Commission should grant DesertXpress a period of sixty (60) months from the Amended Application approval date to complete the construction of the Proposed Crossings; and
  4. Whether the construction of the Proposed Crossings aligns with or impact the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan

### 3. Filing, Safety and Engineering Requirements

Applications must meet the filing requirements of Rule 3.7 (for the construction of a railroad across a public road, highway, or street), Rule 3.9 (for the construction of a public road, highway, or street across a railroad), GOs 26-D (for the minimum clearance requirements), and 176 (for minimum clearance requirements for overhead alternating current (AC) railroad electrification systems at 25 kilovolts (kV) for a high-speed rail system).

Here, the record reflects that the Applicant filed, as part of the Amended Application and by other filings, as ordered by the ALJ, the filings as required under Rules 3.7 and 3.9. The Proposed Crossings, as proposed in the Amended Application, are summarized below:

PROPOSED CROSSINGS	DESCRIPTION
Afton Road Crossing (Proposed California Public Utilities Commission)	The proposed crossing will be constructed under the existing bridge on Afton Road (N 2215879.76, E 7036671.33) (Caltrans Bridge No. 54-364) (DOT crossing No. 978 806 F), a 34-foot, bridge crossing over I-15 at MP 108.34. The proposed track configuration for this crossing is a single track with a minimum vertical clearance of 19 feet. The nearest proposed

(CPUC) No. 141-108.34-A)	public crossing to the east will be Basin Road at MP 99.52 (Proposed CPUC No. 141-99.52-A) and to the west will be Field Road at MP 116.31 (Proposed CPUC No. 141-116.31-A).
Basin Road Crossing (Proposed CPUC No. 141-99.52-A)	The proposed crossing will be constructed under the existing bridge on Basin Road (N 2227770.56, E 7080649.18) (Caltrans Bridge No. 54-383) (DOT Crossing No. 978 807 M), a 34-foot, bridge crossing over I-15 at MP 99.52. The proposed track configuration for this crossing is a single track with a minimum vertical clearance of 19 feet and 1 inch. The nearest proposed public crossing to the east will be East Razor Road at MP 95.71 (Proposed CPUC No. 141-95.71-A) and to the west will be Afton Road at MP 108.34 (Proposed CPUC No. 141.108.34-A).
Razor Road Crossing (Proposed CPUC No. 141-95.71-A)	The proposed crossing will be constructed under the existing bridge on Razor Road (N 2239977, E 7096527.69) (Caltrans Bridge No. 54-391) (DOT Crossing No. 978 808 U), a 34-foot, bridge crossing over I-15 at MP 95.71. The proposed track configuration for this crossing is a single track, with a minimum vertical clearance of 19 feet and 6 inches. The nearest proposed public crossing to the east will be ZZYXZ Road at MP 89.77 (Proposed CPUC No. 141-89.77-A) and to the west will be Basin Road at MP 99.52 (Proposed CPUC No. 141-99.52-A).
Halloran Springs Road Crossing (Proposed CPUC No. 141-70.47-A)	The proposed crossing will be constructed under the existing bridge on Halloran Springs Road (N 2329190.47, E 7190329.76) (Caltrans Bridge No. 54-338) (DOT Crossing No. 978 809 B), a 34-foot bridge crossing over I-15 at MP 70.47. The proposed track configuration for this crossing is a single track, with a minimum vertical clearance of 21 feet and 6 inches. The nearest proposed public crossing to the east will be Halloran Summit Road at MP 64.50 (Proposed CPUC No. 141-64.50-A) and to the west will be East Baker Road at MP 81.48 (Proposed CPUC No. 141-81.48-A).
Halloran Summit Road (Proposed CPUC No. 141-64.50-A)	The proposed crossing will be constructed under the existing bridge on Halloran Summit Road (N 2340116.18, E 7219841.75) (Caltrans Bridge No. 54-347) (DOT Crossing No. 978 810 V), a 34-foot bridge crossing over I-15 at MP 64.50. The proposed track configuration for this crossing is a single track, with a minimum vertical clearance of 22 feet and 1

	inch. The nearest proposed public crossing to the east will be Cima Road at MP 57.34 (Proposed CPUC No. 141-57.34-A) and to the west will be Halloran Springs Road at MP 70.47 (Proposed CPUC No. 141-70.47-A).
Cima Road Crossing (Proposed CPUC No. 141-57.34-A)	The proposed crossing will be constructed under the existing bridge on Cima Road (N 2355880.93, E 7254198.29) (Caltrans Bridge No. 54-363) (DOT Crossing No. 978 811 C), a 34-foot bridge crossing over I-15 at MP 57.34. The proposed track configuration for this crossing is a single track, with a minimum vertical clearance of 21.35 feet. The nearest proposed public crossing to the east will be Bailey Road at MP 48.63 (Proposed CPUC No. 141-48.63-A) and to the west will be Halloran Summit Road at MP 64.50 (Proposed CPUC No. 141-64.50-A).
Yates Well Road Crossing (Proposed CPUC No. 141-38.72-A)	The proposed crossing will be constructed under the existing bridge on Yates Well Road (N 2393036.35, E 7329297.04) (Caltrans Bridge No. 54-542) (DOT Crossing No. 978 812 J), a 34-foot bridge crossing over Interstate 15 at MP 38.72. The proposed track configuration for this crossing is two tracks, with a minimum vertical clearance of 21.35 feet. The nearest proposed public crossing to the east will be Primm Boulevard Roadway in Nevada at MP 0.3 and to the west will be Nipton Road at MP 43.65 (Proposed CPUC No. 141-43.65-A).

Based on the RSD's field diagnostic meeting (February 26, 2020), site visit and review of the Application, the Amended Application and supporting materials, RSD concluded the Proposed Crossings comply with Rules 3.7 (specifically Rules 3.7 (c), (d), (e), and (f)) and 3.9 and GOs 26-D and 176 and recommended approval of the Amended Application.<sup>4</sup> Specifically, RSD determined that the Proposed Crossings comply with the applicable sections of GO 26-D as follows:

For Proposed Crossings under the existing roadway:

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<sup>4</sup> Response at 2 and 5.

- (1) The horizontal clearances are 9 feet and meets the required minimum of 8 feet 6 inches under GO 26-D, Section 3.2; and
- (2) The vertical clearances of the proposed crossings are in compliance with the requirements under GOs 26-D and 176, as shown for each crossing in the table below:

<b>Proposed Crossings</b>	<b>Track Speed</b>	<b>Req'd Vertical Clearance</b>	<b>Proposed Vertical Clearance</b>	<b>Applicable General Order</b>
Afton Road	<150 MPH	19 feet	19 feet	GO 26-D
Basin Street	<150 MPH	19 feet	19 feet 1 inch	GO 26-D
Rasor Road	<150 MPH	19 feet	19 feet 6 inches	GO 26-D
Halloran Springs Road	>150 MPH	21.35 feet	21 feet 6 inches	GO 176
Halloran Summit Road	>150 MPH	21.35 feet	22 feet 1 inches	GO 176
Cima Road	>150 MPH	21.35 feet	21.35 feet	GO 176
Yates Well Road	>150 MPH	21.35 feet	21.35 feet	GO 176

Upon review, we agree with RSD. We, therefore, find that DesertXpress complied with the applicable filing requirements set forth in Rules 3.7 and 3.9, and the Proposed Crossings comply with GOs 26-D and 176.

As for DesertXpress' request for a 60-month rather than the standard 36-month authorization to construct the Proposed Crossings, we find it reasonable in view of the complexities and intricate timing coordination required for the Project, of which the Proposed Crossings are a part.

We also adopt the recommended language proposed by RSD for this decision, to which DesertXpress did not object.

#### **4. Environmental Review**

The Project, including the Proposed Crossings, constitutes a project under the National Environmental Policy Act (NEPA).<sup>5</sup> As discussed below, FRA is the lead agency under NEPA for the purposes of identifying environmental impacts of the Project.

##### **4.1. Compliance with National Environmental Policy Act**

NEPA lead agency, FRA, in cooperation with the Bureau of Land Management (BLM), Surface Transportation Board (STB), Federal Highway Administration (FHWA), and the National Park Service (NPS), with the added participation of Caltrans and the Nevada Department of Transportation (NDOT), prepared the DEIS in March 2009, SDEIS in August 2010, and FEIS in March 2011. FRA issued a Record of Decision (ROD) for the Project on July 8, 2011.<sup>6</sup>

Almost eight years after the issuance of the ROD, in January 2019, DesertXpress made minor modifications to (1) the track alignment (between Apple Valley and Las Vegas and locating more of the tracks within the I-15 freeway median with portions following the north and east side of I-15 freeway),

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<sup>5</sup>42 U.S.C. 4371 *et seq.*

<sup>6</sup> The ROD summarizes the environmental review process FRA conducted in accordance with NEPA, and FRA's Procedures for Considering Environmental Impacts. The ROD identifies the alternatives considered by FRA, addresses comments received during the NEPA process, and identifies the Selected Alternative. The ROD also includes a list of all measures to avoid and minimize environmental harm, including a monitoring and enforcement program to ensure adherence to these measures. Finally, the ROD presents the FRA decision, determinations, and findings regarding the Project, and identifies the factors that FRA considered in making its decision. (40 CFR §1505; 64 Fed. Reg. 28545, May 26, 1999.)

(2) station sites in Apple Valley and the Las Vegas area, and (3) other ancillary facilities.<sup>7</sup>

Segment 3 rail alignment, which included the Segment 3 Crossings, was not modified after the issuance of the ROD, although the Maintenance of Way (MOW) Facility was relocated from Baker, California to the I-15 freeway median adjacent to the California Agricultural Inspection Station, approximately six miles south of the California/Nevada state line, in Segment 4.<sup>8</sup> The Segment 4 alignment was modified to travel entirely within the median of the I-15 freeway.<sup>9</sup>

In view of these Project modifications, FRA reevaluated the FEIS in cooperation with BLM, STB, FHWA, and the US Army Corps of Engineers, with added participation from Caltrans and NDOT.<sup>10</sup> FRA completed the reevaluation of the FEIS and ROD in September 2020, and issued the Reevaluation, concluding that the modifications reduced overall environmental impact, as compared to the initial project proposal, and did not constitute changes with significant environmental impacts that were not previously evaluated in the FEIS issued in 2011.

#### **4.2. Consideration of Environmental Effects**

The Commission must consider the environmental impacts identified in the final environmental document, the FEIS and Reevaluation, as it relates to the Proposed Crossings which are part of the Project Segments 3 and 4. The Commission has the authority to mitigate or avoid only the direct and indirect

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<sup>7</sup> 2020 Reevaluation at 3-4.

<sup>8</sup> Reevaluation, Attachment A, Summary of Project Modification (Reevaluation Modification Summary), at 5.

<sup>9</sup> *Id.*, at 5-6.

<sup>10</sup> Reevaluation, Summary and Conclusion, [at 1](#).

environmental effects of those parts of the Project involving the Proposed Crossings. The Commission also must approve any mitigation measures that avoid or mitigate the environmental effects due to the parts of the Proposed Crossings approved by the Commission and within the Commission's jurisdiction, unless the changes or alterations are infeasible for specific economic, legal, social, technical, and other considerations.<sup>11</sup> The Commission further must balance any unavoidable impacts against specific economic, legal, social, technical, or other benefits.

Segments 3 and 4 of the Project, including the Proposed Crossings, were assessed in the FEIS and Reevaluation. Segment 3 runs approximately 84 miles from Yermo to Mountain Pass; and Segment 4 runs approximately 20 miles from Mountain Pass to Primm. The Preferred Alternative alignments for Segments 3 and 4 are located primarily in the median or directly adjacent to the I-15 freeway within the ROW and enable construction of DesertXpress tracks, drainage, parallel access road, and separation barrier within the existing I-15 ROW.

The environmental documents prepared for the Project, the FEIS and Reevaluation, considered numerous categories of possible impacts. These included: transportation; air quality; noise and vibration; greenhouse gas emissions; biology; hydrology; geology; paleontology; hazardous materials; agricultural lands; aesthetics and visual resources; cultural resources; safety and security; parks and recreation; public utilities; energy; and regional and cumulative impacts.

An extensive set of mitigation measures was developed to avoid, lessen, and/or compensate for the impacts caused by the Project. Impacts identified as

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<sup>11</sup> 14 Cal. Code Regs. §§ 15091(a)(2) and 15096(g).

significant for the whole Project include impacts to biological resources; aesthetics and visual resources; noise and vibration; air quality; archaeological resources; paleontological resources; hydrologic resources; land use; parklands; traffic; and farmlands.

Of those impacts, only impacts to biological and hydrological resources, including noise, vibration, and air quality impacts, result from construction of the Proposed Crossings and are subject to mitigation to avoid, minimize, or compensate for those impacts.

Those biological impacts will be mitigated by an extensive survey and monitoring regime in addition to compensatory mitigation for appropriate habitats. The hydrological impacts, namely potential runoff, will be mitigated by drainage design to work with existing I-15 stormwater management systems and the implementation of stormwater best management practices, in compliance with appropriate water quality permits during construction to prevent construction impacts.

Those impacts from construction noise and vibration will be mitigated by complying with local noise ordinances, including limiting construction to daytime hours. Impacts to air quality from construction will be mitigated by using updated equipment and complying with local air quality management district rules and permits.

The FEIS and the Reevaluation for the Project found that the majority of the significant environmental impacts associated with the construction and operation of the Project (1) did not relate directly to the Proposed Crossings and (2) could be mitigated and minimized to less than significant. The FEIS and Reevaluation also identified that the Project would reduce greenhouse gas emissions over the course of its operation.

The Commission has reviewed and considered the FEIS, including the Reevaluation, as it relates to the Proposed Crossings and finds that the FEIS is adequate for our decision-making purposes in this proceeding.

#### **4.3. California Environmental Quality Act Exemption Claim**

DesertXpress cites to *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998) and *Friends of Eel River v. North Coast Railroad Authority*, 3 Cal. 5th 677, 714-717 (2017) and contends that the Application and Amended Application are exempt from CEQA requirements to prepare a separate CEQA document under the declaratory order of the Surface Transportation Board (STB Order) pursuant to DesertXpress' Petition for Declaratory Order, dated June 25, 2007,<sup>12</sup> and case law.

In the STB Order, STB concluded that the Project is subject to its preemption authority because DesertXpress intends to carry passengers by rail in interstate transportation. STB also found that DesertXpress will be providing this transportation as a common carrier, offering service to the general public. Thus, STB found that the Project, which includes the Proposed Crossings, involves transportation by a rail carrier, and STB has exclusive jurisdiction over the planned new track, facilities, and operations.<sup>13</sup> Accordingly, STB concluded that state permitting and land use requirements such as CEQA are preempted under its federal preemption authority pursuant to 49 U.S.C. §10501(b), since the public

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<sup>12</sup> DesertXpress Enterprises, LLC-Petition for Declaratory Order, STB Finance Docket No. 34914 (STB served June 27, 2007) (STB Order).

<sup>13</sup> See *American Orient Express Railway Company v. STB*, No. 06-1077, slip op. at 4, 6 (D.C. Cir. Apr. 20, 2007), aff'g *American Orient Express Railway Company, LLC – Petition for Declaratory Order*, STB Finance Docket No. 34502 (STB served Dec. 27, 2005) (rail carrier may provide railroad transportation by transporting passengers over its own tracks).

will have opportunities to participate in the NEPA environmental review process.<sup>14</sup>

As discussed in Section 4.2 of this decision, we also have carefully reviewed the FEIS and the Reevaluation with the emphasis on the Proposed Crossings and the required mitigations and mitigation monitoring program.

Based thereon, we find that the Proposed Crossings, including associated impacts and mitigations, were adequately reviewed in the FEIS and the Reevaluation; and the FEIS and the Reevaluation are sufficient for our decision-making purposes concerning the associated environmental impacts. Accordingly, we find it unnecessary to address the Applicant's preemption and CEQA exemption claims here.

## **5. Alignment with the Commission's Environmental and Social Justice Action Plan**

In February 2019, the Commission adopted the ESJ Action Plan to serve as a roadmap for implementing the Commission's vision to advance equity in its programs and policies for ESJ or disadvantaged communities.

Here, the FEIS reviewed the Project's environmental and economic impacts to ESJ communities.<sup>15</sup> "Environmental justice communities" is defined in the FEIS to include low-income populations greater than 25 percent of the total population of the community, minority populations greater than 50 percent of

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<sup>14</sup> STB Order at 5.

<sup>15</sup> The area of analysis for environmental justice considers the environmental justice communities within one mile of the Preferred Alternative, as measured from the center line of the rail alignment. In order to identify census blocks meeting these criteria, the 2000 U.S. Census block groups within a two-mile radius were examined. (FEIS at 3.1-21.)

the total population of the community, and low-income, or more, minority populations 10 percentage points higher than the city or county average.<sup>16</sup>

The FEIS found the majority of the Project will be within or adjacent to an existing transportation corridor and will not bisect minority or low-income neighborhoods nor require the displacement of residences in those neighborhoods.<sup>17</sup> Since the Preferred Alternative rail alignment will be fully grade-separated and located almost entirely within the existing I-15 freeway ROW, the rail alignment will not interfere with access to existing land uses.<sup>18</sup>

However, the Project may cause negative gradual economic impact to 13 minority and poverty census blocks<sup>19</sup> of ESJ communities in the City of Barstow (City) and may have environmental impacts on noise, dust, traffic, and visual resources to 12 census blocks of ESJ communities.<sup>20</sup> The Segment 3

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<sup>16</sup> See Reevaluation, Attachment B, Resources Impact Analysis Report (Reevaluation Resources Impact Report), at 11.

<sup>17</sup> ROD at 68.

<sup>18</sup> FEIS at 3.1-23.

<sup>19</sup> In order to identify environmental justice block groups near the alignment, census block groups within a two-mile radius of the alignment were examined to determine if they meet or exceed the above environmental justice thresholds. (DEIS at 3.1-46.)

<sup>20</sup> The DEIS was originally based on the 2000 U. S. census data. The analysis was replicated in the Reevaluation with 2017 and 2018 U. S. census data. Since the DEIS, DesertXpress modified the rail alignment for Segment 2 resulting in an increase of ESJ census blocks impacted from four to 12 census blocks of ESJ communities. The increase in the minority population near the I-15 freeway, especially near the City of Barstow, from the 2000 to the 2017 and 2018 census, resulted in a greater number of ESJ census block groups crossed by the modified Project relative to the alignment proposed in the Preferred Alternative of the FEIS. Reevaluation Resources Impact Report at 11.

An average of 41.1 percent of the population in San Bernardino County is a minority race. Any census block groups containing minority groups that are more than 50 percent of the population would be considered environmental justice block groups in San Bernardino. Of the census blocks evaluated, 22 blocks in San Bernardino County meet this criterion and are eligible for environmental justice considerations. Most of the census blocks in San Bernardino with a high minority population are centered around Victorville. (DEIS at 3.1-47.)

Crossings, which comprised of six of the seven Proposed Crossings, are located within or near sensitive receptors of ESJ communities in Baker. However, the Segment 3 Crossings will minimize isolation of Baker. The Yates Well Road crossing in Segment 4 of the Project will have minimal impacts to ESJ Communities, due to a lack of sensitive receptors in the immediate vicinity. Since (1) there is no evidence in this proceeding of any ESJ issues concerning Yates Well Road crossing in Segment 4, (2) only industrial uses and unoccupied lands are adjacent to the Yates Well Road crossing, and (3) the nearest ESJ community is over 10 miles from that crossing, we find no need to examine the ESJ impacts of Segment 4.

#### **5.1. Overall Economic and Air Quality Impacts to the ESJ Communities from the Project**

It is possible that the City and 13 census blocks of ESJ communities may experience some gradual reduction in economic activity, jobs, and income, when the Project is constructed and in operation. This potential gradual impact is premised on the following: (1) the City's economy is being largely driven by taxable sales from freeway-related traffic through it; and (2) an actual diversion of vehicle through-traffic that will result from the Project, leading to a loss in the City's economic base of funds over time.<sup>21</sup>

However, the Project is also expected to bring positive economic growth and value to the City and the region, including 13 census blocks of ESJ communities. Within San Bernardino County, the City will be the most central location for construction activities associated with the Project, particularly for the 113-mile stretch of the rail alignment between the City and Primm. A significant share of the construction jobs and associated revenue created by the Project

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<sup>21</sup> *Id.* at 3.1-17. *See also* FEIS at 3.1-16 to 3.1-17

construction and operation in San Bernardino County will flow directly to the City and its immediate environs, resulting in about an additional 2,470 jobs in the City during the three- to seven-year construction period with an annual average of 823 jobs per year with an eight percent increase in employment over the 2009 employment level of 10,463. These 2,470 jobs are anticipated to generate an average payroll (combination of salaries) of \$59.5 million over the course of the construction period.

While the construction jobs will be temporary during the construction phase, DesertXpress further anticipates creation of 1,000 permanent jobs for operation of the rail line in the region. The introduction of the temporary and permanent jobs and associated salaries offsets the potential and gradual negative economic impact on the City's ESJ communities.

As an enhanced mitigation measure, the FEIS recommended coordination between DesertXpress and the City's and San Bernardino County's economic development departments to avail City residents of job opportunities, during construction, operation, and maintenance of the railway. DesertXpress further committed to identifying and jointly developing programs for job and technical skills training to support the Project in all phases of design, construction, testing, commissioning, and operations.<sup>22</sup> DesertXpress will work closely with the City to identify appropriate and beneficial construction and staging activities located within the City. Working with local land use planning authorities and transit providers, DesertXpress will implement transit oriented and master planned

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<sup>22</sup> Reevaluation, Attachment I, Mitigation Measures (Reevaluation Mitigation Measures), at 2.

development at the selected station sites and surrounding areas and facilitate intermodal connections where practicable.<sup>23</sup>

Additionally, the City residents, including the ESJ communities, will benefit from improved air quality through reduced traffic congestion and fossil fuel consumption after the completion of the Project. DesertXpress estimates an annual reduction of 100,000 metric tons of carbon emission by increase ridership and reduction in automobile travel.

## **5.2. Environmental Impacts to ESJ Communities and the Segments 3 Rail Alignment (Segment 3 Crossings of the Project)**

Segment 3 and the Segment 3 Crossings are entirely in the I-15 freeway right-of-way. The Segment 3 rail alignment avoids potential conflicts with the planned land uses.

The Reevaluation, using 2017 and 2018 Census data, concluded that the modified Project, including Segments 3 and 4, will not result in new environmental effects disproportionately borne by environmental justice communities.<sup>24</sup> Thus, the Project modifications will not result in substantial changes in the evaluation of impacts to the ESJ communities in the FEIS.<sup>25</sup>

Upon review of the FEIS and the Reevaluation and given the increased public safety benefit from grade-separated Proposed Crossings, as compared to at-grade crossings, we find the Proposed Crossings merit approval. Although there may be some potential and gradual negative economic impacts from the Project and, more specifically, the construction of the Proposed Crossings, the

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<sup>23</sup> *Id.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

mitigating factors, and measures, set forth above, reduce the impact to the ESJ communities to less than significant levels.

The Project further meets the Commission's ESJ Action Plan goals to 1) improve local air quality and public health through reduced carbon emissions; 2) improve access to transportation services; and 3) promote economic and workforce development opportunities in the 13 ESJ census blocks affected by the Project. We note the identified negative economic impacts are not directly attributable to the construction of the Proposed Crossings but related to the overall project.

On balance, the Commission finds that the construction of the Proposed Crossings will be consistent with the goals set forth in the Commission's ESJ Action Plan and adopts the mitigation measures, set forth in the mitigation plan, for adoption of Segments 3 and 4 rail alignment and to minimize the economic impact on the affected ESJ communities. Consistent with the conclusions in the FEIS and Reevaluation, we find that the Proposed Crossings will not result in a disproportionate environmental impact upon the affected ESJ communities.

## **6. Conclusion**

Upon review, the Commission finds that this uncontested Amended Application and the Proposed Crossings comply with Rules 3.7 and 3.9 and GOs 26-D and 176. DesertXpress has satisfied the requirements under CEQA, and the Amended Application and the Proposed Crossings align with the Commission's ESJ Action Plan. DesertXpress' request for a 60-month rather than the standard 36-month authorization to construct the Proposed Crossings is also reasonable in view of the complexities and intricate timing coordination required for the Project, of which the Proposed Crossings are a part. Finally, RSD's recommended ordering paragraphs for this decision are reasonable.

## **7. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, as provided in Rule 14.6(c)(2) of the Commission's Rules, the otherwise applicable 30-day public review and comment period for this decision is waived.

## **8. Assignment of Proceeding**

Commissioner Genevieve Shiroma is the assigned Commissioner and Daphne Lee is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. DesertXpress filed the Application on January 5, 2021, pursuant to Pub. Util. Code §§1201 to 1205, and in accordance with Rules 3.7 and 3.9 and GOs 26-D and 176.
2. On January 20, 2021, DesertXpress tendered an Amended Application which was later filed on February 2, 2022.
3. On January 26, 2022, DesertXpress filed Amendments to the Application. Both the Amended Application and the Amendments to the Application are collectively referenced as Amended Application in this decision and amended the proposed configuration of Segment 3 Crossings from double to single track.
4. The Amended Application seeks authority to construct seven new grade-separated highway-rail crossings under Afton Road (MP 108.34), Basin Road (MP 99.52), Rasor Road (MP 95.71), Halloran Springs Road (MP 70.47), Halloran Summit Road (MP 64.50), Cima Road (MP 57.34) and Yates Well Road (MP 38.72).
5. RSD conducted a site inspection of the locations for the Proposed Crossings on February 26, 2020, reviewed the Amended Application and supporting materials, determined that the Amended Application complies with

the applicable Commission GOs and Rules, and recommended approval of the Proposed Crossings.

6. FRA, as the lead agency for the Project under NEPA, prepared the FEIS in March 2011 and issued a ROD for the Project on July 8, 2011.

7. The Project was modified after July 8, 2011, and in 2020, FRA reevaluated the FEIS in cooperation with BLM, STB, FHWA, and the US Army Corps of Engineers, with added participation from Caltrans and NDOT.

8. In September 2020, FRA released the Reevaluation, its report on the reevaluation of the FEIS and ROD after DesertXpress submitted modifications to the Project. In it, FRA concluded the modifications reduced overall environmental impact from the initial project proposal and did not constitute changes with significant environmental impacts that were not previously evaluated in the FEIS issued in 2011.

9. FEIS and the Reevaluation proposed the adoption of the modified Segments 3 and 4 of the Project. Since the modified rail alignment will be fully grade-separated and located almost entirely within the existing I-15 freeway right of way, the modified rail alignment will not interfere with access to existing land uses.

10. The Project may cause negative gradual economic impact to 13 minority and poverty census blocks of ESJ communities in the City and may have environmental impacts on noise, dust, traffic, and visual resources in 12 census blocks of ESJ communities.

11. For the Project, which includes the Proposed Crossings, the Commission is a responsible agency under CEQA.

12. The Commission reviewed the FEIS and the Reevaluation with the emphasis on the Proposed Crossings and the required mitigations and mitigation monitoring program.

13. The Proposed Crossings, including associated impacts and mitigations, were adequately reviewed in the FEIS and the Reevaluation, and the FEIS and the Reevaluation are sufficient for our decision-making purposes concerning the associated environmental impacts.

14. Although there may be some potential and gradual negative economic impacts from the construction of the Project, those negative economic impacts are not directly attributable to the construction of the Proposed Crossings.

15. The mitigation measures for the Project, including temporary and permanent job development and measures to reduce impacts from noise, dust, traffic, and visual resources, which are set forth in the mitigation plan, for Segments 3 and 4, will reduce the impacts to the ESJ communities to less than significant level, while the construction of the Project and the Proposed Crossings are expected to bring positive economic impacts to the City and the region's ESJ communities.

16. The Project meets the Commission's ESJ Action Plan goals to 1) improve local air quality and public health through reduced carbon emissions; 2) improve access to transportation services; and 3) promote economic and workforce development opportunities in the ESJ census blocks affected by the Project.

### **Conclusions of Law**

1. DesertXpress should be authorized to construct the seven grade-separated highway-rail crossings as proposed in San Bernardino County, California, as requested in the Amended Application.

2. The Amended Application and the Proposed Crossings comply with Rules 3.7 and 3.9 and GOs 26-D and 176.
3. The FEIS, including the Reevaluation, as it relates to the Proposed Crossings, is adequate for Commission decision-making purposes.
4. It is unnecessary to address the Applicant's preemption and CEQA exemption claims.
5. The Commission should adopt all mitigation measures detailed in the FEIS and the Reevaluation.
6. The request for authority to complete construction of the Proposed Crossings within 60 months is reasonable and should be granted.
7. The Project, which includes the Proposed Crossings, is consistent with the Commissions' ESJ Action Plan's goals.
8. This proceeding should be closed.

### **O R D E R**

**IT IS ORDERED** that:

1. The applicant, DesertXpress Enterprises, LLC dba Brightline West is authorized to construct seven grade-separated highway-rail under-crossings under Afton Road (Milepost (MP) 108.34), Basin Road (MP 99.52), Rasor Road (MP 95.71), Halloran Springs Road (MP 70.47), Halloran Summit Road (MP 64.50), Cima Road (MP 57.34) and Yates Well Road (MP 38.72) as proposed in the Amended Application.
2. The seven grade-separated highway-rail crossings shall be identified by the following California Public Utilities Commission Crossing Numbers (CPUC No.) and United States Department of Transportation Numbers (US DOT No.):

<b>Crossing Name</b>	<b>CPUC No.</b>	<b>US DOT No.</b>
Afton Road	141-108.34-A	978 206 F
Basin Road	141-99.52-A	978 807 M
Rasor Road	141-95.71-A	978 808 U
Halloran Springs Road	141-70.47-A	978 809 B
Halloran Summit Road	141-65.50-A	978 810 V
Cima Road	141-57.34-A	978 811 C
Yates Well Road	141-38.72-A	978 812 J

3. The seven grade-separated highway-rail crossings shall have the configuration specified in the Amended Application and all attachments.

4. DesertXpress Enterprises, LLC dba Brightline West shall comply with all applicable rules, including California Public Utilities Commission General Orders and the California Manual on Uniform Traffic Control Devices.

5. DesertXpress Enterprises, LLC dba Brightline West shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least five business days prior to the opening of the crossings. Notification should be made by e-mail to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

6. Within 30 days after completion of the work authorized by this decision, DesertXpress Enterprises, LLC dba Brightline West shall notify the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division by submitting a completed California Public Utilities Commission Standard Form G (Report of Changes at Highway Grade Crossing and Separations), for the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities

Commission web site at [www.cpuc.ca.gov/crossings](http://www.cpuc.ca.gov/crossings). The completed report may be submitted via email to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

7. DesertXpress Enterprises, LLC dba Brightline West shall notify the Federal Railroad Administration by submitting a Crossing Inventory Form (FRA F6180.71) acknowledging the establishment of the crossing. A copy shall be provided concurrently to the California Public Utilities Commission's Rail Safety Division, Rail Crossings and Engineering Branch. This copy of the form may be submitted electronically to [rceb@cpuc.ca.gov](mailto:rceb@cpuc.ca.gov).

8. This authorization shall expire if not exercised within sixty months of the issuance of this decision unless time is extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

9. A request for extension of the sixty-month authorization must be submitted to the California Public Utilities Commission's Rail Crossings and Engineering Branch of the Rail Safety Division at least 30 days before the expiration of that period.

10. Application and Amended Application 21-01-007 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.