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SERVICE DATE – AUGUST 31, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34914

DESERTXPRESS ENTERPRISES, LLC—PETITION FOR DECLARATORY ORDER

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by DesertXpress Enterprises, LLC (DesertXpress), the Board is instituting a declaratory order proceeding under 5 U.S.C. 554(e) and 49 U.S.C. 721 to determine whether the Board's jurisdiction preempts state and local environmental review, land use restrictions, and other discretionary permitting requirements that might otherwise apply to DesertXpress' proposed construction of an interstate high speed passenger rail system between Victorville, CA, and Las Vegas, NV. No responses to the petition have been filed. The Board seeks public comment on this issue.

DATES: Comments are due October 16, 2006. Replies are due November 6, 2006.

ADDRESSES: Send an original and 10 copies of any comments, referring to STB Finance Docket No. 34914, to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to DesertXpress' representative, Linda Morgan, Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004-2401.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1609.
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

SUPPLEMENTAL INFORMATION: DesertXpress' petition for declaratory order concerns its proposed project to construct an approximately 200-mile interstate high speed passenger rail system between Victorville and Las Vegas. Petitioner states that the project will involve the construction of significant lengths of new track and ancillary facilities, including two passenger stations and a 50-acre train maintenance and storage facility and operations center. DesertXpress states that the proposed route is planned alongside or within the median of Interstate 15 and will provide an alternative to automobile travel on that interstate. Petitioner anticipates that the project will utilize European high-speed trains which, traveling at speeds up to 125 miles per hour, will travel between the two termini in under 105 minutes.

According to petitioner, it has already initiated the Federal environmental review process, met with the Federal Railroad Administration (FRA) about the project, coordinated with the Board and FRA in the preparation of an Environmental Impact Statement, and entered into a Memorandum of Understanding with FRA and the Board. DesertXpress adds that, in the near future, it will seek from the Board the necessary authority to construct the new line and related facilities and to conduct rail operations over the line.

DesertXpress argues that this project presumptively falls within the Board's jurisdiction over transportation by rail carriers as set forth at 49 U.S.C. 10901 and 10501. Petitioner therefore seeks an order from the Board declaring that this project is not subject to state and local environmental review, land use restrictions, and other discretionary permitting requirements in California and Nevada, including the California Environmental Quality Act, because they would impinge upon the federal regulation of interstate commerce. DesertXpress also asks that the Board act on this petition expeditiously to allow the project to advance as quickly and efficiently as possible.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A declaratory order proceeding is thus instituted in this proceeding to invite broad public comment. Any person seeking to participate in support of, or in opposition to, DesertXpress's proposal is invited to submit written comments to the Board regarding whether the agency's jurisdiction preempts state and local environmental review, land use restrictions, and other discretionary permitting requirements that might otherwise apply.

Board decisions, notices, and filings in this and other Board proceedings are available on our website at WWW.STB.DOT.GOV.

Decided: August 25, 2006.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary