UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

October 18, 2010

Wendy Messenger
Federal Railroad Administration
1200 New Jersey Avenue S.E. MS-20
Washington, DC 20590

Subject: Supplemental Draft Environmental Impact Statement for Proposed DesertXpress High-Speed Passenger Train from Victorville, California to Las Vegas, Nevada (CEQ # 20100355)

Dear Ms. Messenger:

The U.S. Environmental Protection Agency (EPA) has reviewed the Supplemental Draft Environmental Impact Statement (SDEIS) for the proposed DesertXpress High-Speed Passenger Train from Victorville, California to Las Vegas, Nevada (Project). Our review is provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

We reviewed the DEIS and provided comments to the Federal Railroad Administration (FRA) on May 22, 2009. We rated the DEIS as *Environmental Concerns – Insufficient Information* (EC-2). Due to continuing concerns that have not been addressed since our May 2009 comments, as well as additional concerns about the project modifications and new information provided in the SDEIS, we are rating the SDEIS as EC-2. Please see the enclosed "Summary of EPA Rating Definitions."

Our comments on the DEIS, as provided to FRA in May 2009 (attached), provided specific recommendations regarding analyses and documentation to assist in assessing potential significant impacts in the areas of: 1) current justification for Project purpose, need, independent utility, and logical termini, 2) impacts to hydrology, aquatic resources, and wildlife movement, 3) construction and air quality analysis, mitigation, and impacts to sensitive receptors in the immediate vicinity of the Project and 4) cumulative impacts from reasonably foreseeable future actions. We have continuing concerns about the lack of information in the SDEIS, particularly with regard to impacts to waters of the United States, and potential avoidance, minimization, and mitigation of those impacts. We also continue to recommend that potential connections of this proposed system to other transportation systems be discussed in the FEIS. We note that despite the year and a half timeframe since our comments were provided to FRA, these recommendations have not been fully addressed in the SDEIS.

In addition, following our review of new information provided in the SDEIS, we have concerns regarding the size and potential impacts of the Victorville Station Site 3, and the potential for noise and other impacts on environmental justice communities, due to the proximity of modified segments of the alignment to those communities.

Please refer to our attached previous comments on the DEIS, and to the additional attached comments on the SDEIS, when preparing the Final Environmental Impact Statement (FEIS).

We appreciate the opportunity to review this SDEIS. When the FEIS is released for public review, please send one copy to the address above (mail code: CED-2). If you have any questions, please feel free to contact me, at 415-947-4161, or Carolyn Mulvihill, the lead reviewer for this Project at 415-947-3554 or mulvihill.carolyn@epa.gov.

Sincerely,

/s/

Connell Dunning, Transportation Team Supervisor
Environmental Review Office

Attachments: EPA's Detailed Comments on the SDEIS
May 22, 2009 Comment letter on the DEIS
Summary of EPA Rating Definitions

CC: Veronica Chan, U.S. Army Corps of Engineers
Patricia McQueary, U.S. Army Corps of Engineers
Mark Littlefield, U.S. Fish and Wildlife Service
Sally Brown, U.S. Fish and Wildlife Service
Janet Bair, U.S. Fish and Wildlife Service
Dan Leavitt, California High Speed Rail Authority
Ray Sukys, Federal Transit Administration
Shawn Oliver, CA Division, Federal Highway Administration
Greg Novak, NV Division, Federal Highway Administration
Scott Wilson, California Department of Fish and Game
Brad Hardenbrook, Nevada Department of Wildlife
John Chisholm, Caltrans
Ronald Kosinski, Caltrans
David Bricker, Caltrans
Lewis Wallenmeyer, Clark County Department of Air Quality and Environmental Management
Steve Cooke, Nevada Department of Transportation

Project Purpose, Need and Independent Utility

We continue to request further justification for the project's western terminus in the community of Victorville. The California Department of Transportation is currently proposing a High Desert Corridor project that would construct an east-west connection between State Route 14 and Interstate 15, and that includes alternatives with right-of-way for high speed rail. This project could provide a future connection between the proposed Desert Xpress system and the California High Speed Rail system. Therefore, the High Desert Corridor project should, at a minimum, be considered in the cumulative impact analysis. EPA also recommends that this project be considered in determining whether Victorville is a logical terminus for a high speed rail corridor connecting Southern California and Las Vegas.

Recommendations:

- Include additional analysis and justification in the Final Environmental Impact Statement (FEIS) to sufficiently demonstrate the independent utility and logical termini of the proposed Southern California hub in Victorville as opposed to other locations west of Victorville that are closer to larger population centers and existing transit connections. EPA's additional comments regarding recommendation are incorporated by reference and provided in the attachment (May 2009 EPA Comment Letter on the DEIS).
- Consider the proposed High Desert Corridor project and the resulting potential connection to California High Speed Rail in this analysis.

Victorville Station Site 3

It is unclear from the Supplemental Draft Environmental Impact Statement (SDEIS) why the proposed Victorville Station Site 3 (VV3) is significantly larger than the two previously proposed station locations. If one of the VV3 options is chosen as part of the preferred alternative, the FEIS should justify why the footprint of this option is so much larger than the other proposed options. Of note is the 111-130 acres of surface parking that is proposed. EPA is concerned about the impact of a facility of this size, given the potential impacts on hydrology, water quality, and other resources.

Recommendations:

- Include in the FEIS a discussion of why the Victorville Station Site has expanded, if one of the VV3 options is chosen.
- Include a discussion of measures to avoid, minimize, and mitigate impacts to hydrology, water quality, and other resources resulting from the increase in impervious surface at the Victorville Station Site, including consideration of structured parking.

Hydrology and Aquatic Resources

While we commend FRA on project modifications, such as the Modified Operations, Maintenance, and Storage Facility, which will decrease the project's impacts on aquatic and other resources, we have continuing concerns about the lack of analysis of impacts to waters of the United States, including wetlands. The SDEIS states that coordination regarding jurisdiction of surface water resources within the project study area is currently underway with the U.S. Army Corps of Engineers (USACE), but the SDEIS, like the DEIS, contains inadequate information on the extent of impacts to waters. EPA understands that the applicant and USACE are in consultation regarding impacts, minimization measures, and the Clean Water Act Section 404 permitting process. While this process is taking place, EPA continues to encourage FRA to include information on impacts and minimization measures in the FEIS. For instance, through communication with USACE, we understand that impacts to waters will be avoided and minimized through spanning of water crossings in certain areas of the corridor. This information, while being discussed in the Section 404 permitting process, should also be discussed in the FEIS, to fulfill the public disclosure requirements of the NEPA process.

In order to adequately assess the impacts to waters, the FEIS should provide direct and indirect acreage impacts to waters. It is unclear if the impacts to waters will be significant; therefore this information, as well as measures to reduce potential significant impacts, should be included in the FEIS. The FEIS should identify and quantify 1) permanent and temporary impacts to waters, and 2) direct, indirect, and cumulative impacts to waters.

As stated in our comments on the DEIS, in order to comply with Clean Water Act Section 404(b)(1), FRA must clearly demonstrate that the preferred alternative is the least environmentally damaging practicable alternative (LEDPA) that achieves the overall project purpose, while not causing or contributing to significant degradation of the aquatic ecosystem. As stated in our May 2009 comment letter, EPA did not believe that the alternatives analysis in the DEIS demonstrated compliance with Section 404(b)(1), and the SDEIS continues to include this deficiency. The documents both lack an analysis of alternatives to minimize environmental impact, including modifications to avoid waters within segments and an analysis of design crossings (e.g., bridges, con spans, and culvert designs) to ensure identification of the LEDPA. This information should be included in the FEIS and should be used to inform decision-making.

Pursuant to Section 404(b)(1), FRA must also mitigate for unavoidable impacts to waters of the U.S. No mitigation measures for impacts to waters are included in the SDEIS.

The SDEIS states that it is assumed that culverts could be provided in areas where channels, streams, and washes are affected, but as stated in our letter on the DEIS, we recommend the use of natural washes, in their present location and natural form, to the maximum extent practicable with the placement of adequate natural buffers for flood control. The FEIS should include more specific information about the design of the stream crossings.

Recommendations:

- Once the delineation of the extent of waters, including wetlands, on the Project site has been verified by the USACE, FRA should update the information regarding estimated impacts to waters and provide this information in the FEIS. A jurisdictional determination by USACE should be performed prior to publication of the FEIS in order to provide a determination of potential significant impacts and identify mitigation and avoidance measures in the design of the Project.
- Update the information provided in the FEIS so that estimated impacts are provided in acreage estimates. Identify and quantify both 1) permanent and temporary impacts to waters, and 2) direct, indirect, and cumulative impacts to waters.
- If it is to be used to justify a Clean Water Act Section 404 permit, the FEIS should include an evaluation of the project alternatives in order to demonstrate the project's compliance with Section 404(b)(1) and authorization of LEDPA. The alternatives analysis should include a reasonable range of alternatives that meet the Project purpose while avoiding and minimizing damage to waters. If, under the proposed Project, dredged or fill material would be discharged into waters of the U.S., the FEIS should discuss alternatives to avoid those discharges.
- The FEIS should include mitigation commitments for impacts to waters, including compensation if waters will be filled.
- The FEIS should include more specific information about the design of the channel, stream, and wash crossings and should commit to mitigation of impacts to these water features, including the use of natural washes, in their present location and natural form, to the maximum extent practicable with the placement of adequate natural buffers for flood control.

Noise and Environmental Justice Impacts

The SDEIS discusses various areas where project modifications, or new development in areas near the project alignment, have increased the number of adverse noise effects. These areas are Segment 2C, Segment 6, and Alignment Adjustment Area 8. We also note that these areas are identified in the SDEIS as environmental justice areas. FRA should commit to mitigating noise impacts in these areas to avoid disproportionately high and adverse impacts on these communities.

EPA is also concerned about other impacts, such as localized air quality impacts, that may occur in areas where the proposed rail alignment is now closer to residential areas, particularly those identified as environmental justice areas. The FEIS should include more detailed information on the distance between the proposed alignment and sensitive receptors, such as residences, and potential impacts on those areas.

The environmental justice analysis should consider all project impacts on affected communities. As stated in the DOT Order on Environmental Justice:

"Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities."[1]

Therefore, the FEIS should include an environmental justice analysis that considers all impacts on environmental justice communities that may experience adverse effects due to the proximity of the proposed alignment.

Recommendations:

- Commit to mitigation of all adverse noise effects, through the mitigation measures listed in the SDEIS.
- Consider relative noise impacts in choosing between the "side running" or "median" options for Segment 2C.
- Include in the FEIS detailed information on the distance between the alignment and sensitive receptors and an analysis of potential localized impacts to those areas, such as air quality.
- Perform a complete environmental justice analysis in areas where the proposed alignment has moved closer to environmental justice communities.

Sustainable Infrastructure

Since the publication of the DEIS, FRA (through USDOT) has committed to advancing sustainable communities through the HUD/DOT/EPA Partnership for Sustainable Communities. The Partnership principles are as follows:

- *Provide more transportation choices.* Develop safe, reliable, and economical transportation choices to decrease household transportation costs, reduce our nation's dependence on foreign oil, improve air quality, reduce greenhouse gas emissions, and promote public health.
- *Promote equitable, affordable housing.* Expand location- and energy-efficient housing choices for people of all ages, incomes, races, and ethnicities to increase mobility and lower the combined cost of housing and transportation.

[1] Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations, 1997.

- *Enhance economic competitiveness.* Improve economic competitiveness through reliable and timely access to employment centers, educational opportunities, services and other basic needs by workers, as well as expanded business access to markets.
- *Support existing communities.* Target federal funding toward existing communities—through strategies like transit oriented, mixed-use development, and land recycling—to increase community revitalization and the efficiency of public works investments and safeguard rural landscapes.
- *Coordinate and leverage federal policies and investment.* Align federal policies and funding to remove barriers to collaboration, leverage funding, and increase the accountability and effectiveness of all levels of government to plan for future growth, including making smart energy choices such as locally generated renewable energy
- *Value communities and neighborhoods.* Enhance the unique characteristics of all communities by investing in healthy, safe, and walkable neighborhoods—rural, urban, or suburban.

FRA should identify in the FEIS how this proposed project will support these principles.

Recommendations:

- Include in the FEIS a discussion of how the proposed project will support the principles of the HUD/DOT/EPA Partnership for Sustainable Communities. Relevant topics include station siting decisions, connections with other public transportation systems, and coordination of other federal policies and investments with the project.
- Coordinate with EPA to ensure that commitments to "green" construction practices are incorporated into specifications and other project development documents. For example, for the construction of new infrastructure, EPA recommends industrial materials recycling, or the reusing or recycling of byproduct materials generated from industrial processes. Contact Jeff Dhont, EPA Region 9, (415-972-3020 or dhont.jeff@epa.gov) regarding information about reuse of industrial materials.