



United States Senate

March 6, 2023

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary Buttigieg,

As the Federal Rail Administration (FRA) conducts a re-evaluation of the 2011 Final Environmental Impact Statement and Record of Decision for Brightline West under the *National Environmental Policy Act* (NEPA), I urge you to ensure the inclusion of three wildlife overpasses as required environmental mitigation. As you may know, on February 15 the California Department of Fish and Wildlife (CDFW), Caltrans, and Brightline announced a non-binding agreement to construct the overpasses to mitigate Brightline West's impacts on endangered desert species. While I appreciate progress on the issue, this mitigation is essential to California desert species and therefore must be guaranteed in federal permitting documents.

Brightline's current project design has high-speed trains running 180 miles between Las Vegas, Nevada and Victorville, California, along the center divider of the Interstate 15 highway, with the large majority of the rail line in California. As I noted in my August letter to FRA Administrator Amit Bose (attached), the best available science shows that the design would create a new and impenetrable barrier across the California desert, completely inhibiting federally and state protected wildlife such as bighorn sheep, desert tortoises, mountain lions, and the Mojave ground squirrel from crossing the highway into their federally protected habitat ranges including the Mojave National Preserve and Death Valley National Park. Scientists at Oregon State University have used GPS tracking collars to unequivocally confirm that bighorn sheep cross the existing highway at three locations along I-15 and that the construction of wildlife overpasses at these locations would effectively mitigate the impenetrable barrier the rail line will create. A letter reiterating scientists' concerns is also attached.

Candidly, hardening the existing highway barrier by adding six-foot concrete walls topped by chain link fences will have significant detrimental impacts on these species, impacts which must be addressed in the forthcoming NEPA document.

In recognition of these necessary mitigations, CDFW, Caltrans, and Brightline reached a two-year informal agreement to design and fund these overpasses as part of the project's construction. As part of this agreement, Caltrans agreed to fund up to 75 percent of the \$125 million they estimate it will cost to construct the overpasses and to maintain them, Brightline agreed to provide in-kind services such as design and construction management, and together

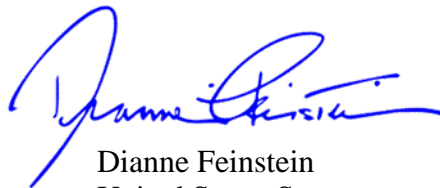
they plan to apply for federal funding. I am pleased that both Brightline and California recognize the need for the overpasses and appreciate their work to date to move forward on an agreement.

However, I am deeply concerned that there are numerous ways that this agreement could dissolve due to any lack of requisite funding, potential project delays beyond the two-year life of the agreement, or should ownership of the project change (as it has several times in the past two decades). Should any other unforeseeable changes or problems occur, there is nothing to prevent the beginning of construction this fall without any plans to build the overpasses.

It is essential, therefore, that these mitigation measures be required in federal permitting documents. Brightline has notified me of their intent to apply for billions in federal grants through the Federal-State Partnership for Intercity Passenger Rail program with the Nevada Department of Transportation. Unfortunately, their application is currently silent on the topic of the overpasses. While I have long advocated for high-speed rail, this is significant funding that must be supported by federally required environmental mitigations regardless of whether or not the funds are awarded. I urge you to structure these mitigation measures such that the agreement carefully negotiated by California and Brightline may fulfill the requirements, while also providing a safeguard should the agreement fail to produce the necessary overpasses during construction.

Thank you for your attention to this important issue, which is essential to the survival of California's desert wildlife, safeguards federally protected habitat, and aligns with the Biden Administration's conservation goals, including wildlife corridors. Please feel free to contact me directly should you have any questions or concerns.

Sincerely,



Dianne Feinstein
United States Senator

DF/fp/as

Attachments:

1. 8/4/22 Senators Feinstein and Padilla letter to Federal Railroad Administrator Amit Bose
2. 2/6/23 Oregon State University scientists' letter to Federal Railroad Administrator Amit Bose

United States Senate

August 4, 2022

The Honorable Amit Bose
Administrator
Federal Railroad Administration
1200 New Jersey Ave SE
Washington, D.C. 20590

Dear Administrator Bose,

As you conduct a re-evaluation of the 2011 Final Environmental Impact Statement and Record of Decision for Brightline West under the *National Environmental Policy Act* (NEPA), we urge you to add measures to the project design and construction to mitigate the impact on federally and state protected wildlife. Brightline's current design—which would construct six-foot concrete walls topped by chain link fences along the existing Interstate 15 highway—would completely inhibit federally and state protected wildlife such as bighorn sheep, desert tortoises, mountain lions, and the Mojave ground squirrel from crossing the highway into their habitat range.

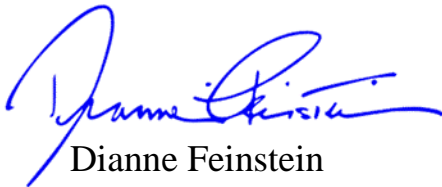
As you know, the California Department of Fish and Wildlife (CDFW), the National Park Service, and Oregon State University have urged the mitigation of these impacts to wildlife through the construction of three overpasses in specific locations along Brightline's route. The agencies have made it clear that the current mitigation scheme of employing culverts and underpasses is inadequate and that the proposed project, not the existing highway, would create a new and impermeable barrier to wildlife movement. For your convenience, please find attached a copy of a letter from CDFW to the Federal Railroad Administration (FRA) outlining the importance of including three wildlife overpasses as part of the project design.

We are grateful that the FRA recognized the need for additional review of Brightline West and in particular its effects on wildlife, wildlife movement, and the mitigation measures proposed and supported by state and federal partners regarding these effects. It is now imperative that the FRA use its authority under NEPA to respond to these comments and include three wildlife overpasses as required project mitigations. The importance of heeding the experts'


recommendations cannot be overstated. California's protected desert species stand to lose their habitats, their mobility, and their ability to repopulate. We urge you to make these wildlife overpasses required mitigation measures as soon as possible so that we, as federal legislators, and our state partners can support implementation efforts.

We are grateful for your attention to this issue and your recognition of the need for Brightline to engage in meaningful environmental mitigation for their project. We look forward to working with you, Caltrans, CDFW, and Brightline to ensure California's desert is protected as we continue to build necessary passenger rail.

Sincerely,



Dianne Feinstein
United States Senator



Alex Padilla
United States Senator

DF/fp/as

Attachment: 4/7/22 California Department of Fish and Wildlife Letter to the Federal Rail Administration and California Department of Transportation

Christina Aiello, Ph.D.
Oregon State University
104 Nash Hall
Corvallis, Oregon 97331
702-481-3957
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2/6/2023

Amit Bose, Administrator
Federal Railroad Administration
1200 New Jersey Ave SE
Washington, D.C. 20590
amitabha.bose@dot.gov

Re: Adding Necessary Wildlife Overpasses to Brightline West High-Speed Rail Project

Dear Administrator Bose:

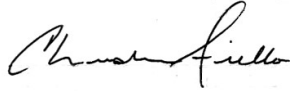
As the FRA re-evaluates the NEPA EIS associated with Brightline West's Las Vegas to Apple Valley segment, we write again to address inaccuracies noted in the September 2020 XpressWest NEPA Decision Memo Final - Attachment H: Biological Resources Technical Report. We, the signees, have conducted decades of research on populations of desert bighorn sheep likely to be affected by the HSR. These efforts have produced extensive evidence that the high-speed rail (HSR) would prevent at-grade crossings by desert bighorn sheep and stands to directly conflict with state and federal-level initiatives to preserve wildlife connectivity. **Bighorn sheep can, and currently do, cross I-15 at-grade.** We maintain our strongest recommendation that overpasses be included in the HSR mitigation to preserve movements by wildlife and maintain the last links of crucial connectivity between populations across this highway.

The current plan to construct the HSR within the right of way and maintain bridges and culverts that currently exist over washes will not maintain existing levels of connectivity between bighorn sheep populations. The plan will reduce, if not effectively eliminate, connectivity across I-15. The HSR would add a unique impact to the landscape separate from the current impacts of the highway. Our research focused on this question has found no recent evidence that bighorn use underpasses to cross I-15. We have, however, documented evidence that bighorn attempt at-grade crossings and have successfully crossed I-15 at-grade. The EIS' fundamental assumption that I-15 is a complete barrier and prevents any at-grade wildlife crossings by bighorn is now known to be incorrect.

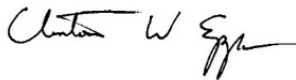
We previously provided a description of the data that support our statements to FRA in the document "Potential impacts of the Victorville to Las Vegas high-speed rail on wildlife connectivity, with focus on desert bighorn sheep" (Aiello and Epps, 2022). Many of the publications referenced in the document were also provided to FRA. We continue to work toward publishing results of our research on bighorn connectivity across I-15 and add here two new publications that support the statements we have made (Aiello et al. 2023, Dekelaita et al. 2023). While that research focuses on broader matters, both studies provide evidence that I-15 is not a complete barrier to at-grade movement. For example, GPS-monitoring of just a small subset of bighorn sheep demonstrated an at-grade crossing (at Soda Mountain). A roadkill event at a similar location further indicated that bighorn attempt at-grade crossings. Without extensive collaring, we primarily observe failed crossings through reported vehicle strikes, but some subset of crossing attempts are surely successful, even if unobserved. Lastly, simulated bighorn movement supports this assumption – our most recent results suggest there is currently connectivity across I-15 at-grade, but at a much lower rate than was once possible.

We continue to encourage the FRA to take into account the large body of existing science on this important issue and ensure that wildlife overpasses are included in the project's mitigation plan to address the project's proposed impacts on this state-protected species. Thank you for your time.

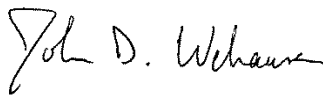
Sincerely,



Christina Aiello, Ph.D.
Research Associate, Department of Fisheries, Wildlife, and Conservation Sciences
Oregon State University



Clinton W. Epps, Ph.D.
Professor, Department of Fisheries, Wildlife, and Conservation Sciences
Oregon State University



John D. Wehausen, Ph.D.
Retired, University of California, White Mountain Research Center



Vernon C. Bleich, Ph.D.
Senior Environmental Scientist (retired), California Department of Fish and Game
Research Professor, University of Nevada Reno

Cited Literature

Aiello CM, Galloway NL, Prentice PR, Darby NW, Hughson D, Epps CW. 2023 Movement models and simulation reveal highway impacts and mitigation opportunities for a metapopulation-distributed species. *Landsc Ecol.* <https://doi.org/10.1007/s10980-023-01600-6>

Dekelaita DJ, Epps CW, German DW, Powers JG, Gonzales B J, Abella-Vu RK, Darby NW, Hughson DL, Stewart KM. 2023. Animal movement and associated infectious disease risk in a metapopulation R. *Soc. open sci.* <http://doi.org/10.1098/rsos.220390>