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August 21, 2006

By Fax and Mail

565-9000

Section of Environmental Analysis

Surface Transportation Board

1925 R Street, NW

Attn: Ms. Victoria J. Rutson

RE: STB Finance Docket No. 34836, Arizona Eastern Railway, Inc.; Construction of a Line of Railroad in Graham County, AZ, Petition for Exemption Request from waiver of requirements of 49 CFR 1105.6(a).

Dear Ms. Rutson:

I am writing on behalf of the Arizona Eastern Railway, Inc. ("AZER"), in connection with the above-captioned proceeding. The purpose of this letter is to request a waiver of the requirements of 49 CFR 1105.6(a), requiring the preparation of an Environmental Impact Statement for a railroad construction proposal. For the reasons stated below, AZER believes that an Environmental Assessment (EA) should be adequate to address the impacts of the proposed construction.

As you will recall, on August 4, 2006, AZER filed a Petition for Exemption with the Board from the requirements of 49 U.S.C. 10901, to permit it to construct and operate a new line of railroad. The proposed line will extend approximately ten miles, starting at the connection with AZER's existing line of railroad at Safford, AZ, passing by the Safford Municipal Airport, and terminating at the new mine Phelps-Dodge Mining Company ("Phelps-Dodge") is building near Safford (hereafter "the Safford Mine").

In terms of the status of this project, AZER has:

1) conferred with the SEA staff on two occasions (November 18, 2005 and March 9, 2006) to discuss this project, 2)

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obtained a waiver of the SEA's six months prefiling notice requirement (granted by letter dated March 3, 2006, from Ms. Victoria Rutson), 3) obtained SEA approval to engage the San Francisco-based environmental consulting firm of Circlepoint, Inc. (Circlepoint), to serve as an independent third party environmental consultant under the direction and supervision of the SEA, 4) on May 4, 2006, executed a Memorandum of Understanding between the Board (SEA), Circlepoint, and itself, 5) engaged Westland Resources, Inc. (Westland), as its environmental consultant to undertake some preliminary environmental research so as to expedite the independent activities of Circlepoint on behalf of the SEA and to act on behalf of AZER in obtaining the Section 404 permit from the Army Corps of Engineers, 6) arranged for Circlepoint to prepare and distribute a draft work plan, 7) arranged for Circlepoint to prepare and arrange for the SEA to distribute the environmental consultation letters to affected local, state and federal agencies as well as any other affected parties, 8) hosted a site visit of the property between July 18 and 20, 2006, by AZER's representatives, Circlepoint's Katrina Hardt and the SEA's Ms. Diana Wood, 9) obtained a likely consensus of the affected parties as to the optimum alignment for the right of way, 10) obtained support of City officials and community leaders for the project, and 11) filed the above-described petition for exemption with the Board for authority to construct and operate the subject line of railroad.

AZER's environmental consultant (Westland) has advised that the Gila River is probably subject to the Corps' jurisdiction so that an appropriate section 404 permit under the Clean Water Act must be obtained in order to build a bridge over that river. AZER will promptly seek any necessary permits.

In support of its position that an EA is the appropriate level of environmental review, AZER states that it has met with local officials and property owners and selected one route alignment that avoids property conveyed to the City by the Bureau of Land Management and utilized for recreational purposes. AZER has also determined that its chosen route alignment should meet with approval from state and local officials and adjoining property owners.

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Furthermore, AZER notes that the railroad will traverse a sparsely populated area consisting of dry, relatively flat farmland and scrub desert. The line will cross just two public roads at grade and one river [the Gila River]. It will not cross any other railroads. Traffic on the Line will be modest, one daily roundtrip handling approximately 5,000 cars annually. AZER anticipates that the line will divert freight from area roads, specifically US Highway 70, resulting in beneficial environmental and safety impacts.

Additionally, a preliminary assessment of the project suggests that other environmental impacts, including noise, air quality, surface water quality, safety, and cultural and historical impacts, are likely to be minor. Westland is currently working on a Biological Assessment to determine whether any critical habitats for endangered species exist and to identify potential impacts of the project to any such identified resources. Regarding Indian burial sites, unique archeological sites, or other matters within the purview of the Arizona SHPO, Westland's initial review of documents prepared for the Phelps-Dodge portion of the alignment indicates that the proposed alignment through the Phelps-Dodge property is not likely to adversely affect archeological sites. All site information has not yet been obtained from Phelps-Dodge. Westland has also determined that there is a high potential for discovering additional Register-eligible prehistoric or historic sites along the railroad's proposed right of way. Coordination with the US Fish and Wildlife Service and the State Historic Preservation Office for biological and cultural resources, respectively, will be undertaken as needed to address any potential adverse impacts to such resources and identify conservation measures designed to reduce such impacts.

In conclusion, the anticipated lack of significant environmental impacts of this proposed rail construction project warrants the granting of a waiver of 49 CFR 1105.6(a) and a preliminary determination that, at this time, an EA is the sufficient level of environmental documentation for this project. Specifically, the project information developed to date indicates that there are not likely to be any significant impacts to transportation systems, land use, energy, air quality, noise, safety, biological resources, surface or ground water resources, or

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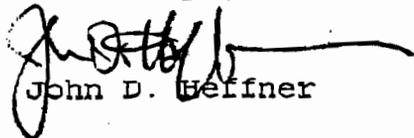
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cultural resources. Nor is it anticipated that there will be high or disproportionate impacts on minority or low-income populations based upon the review of existing demographic data for the region and site reconnaissance. An EA in this instance would be consistent with the SEA's review of other construction cases of limited scope. See, e.g., Entergy Arkansas - Construction and Operation Exemption - Between White Bluff, AR, STB FD No. 33782 (served Sept. 28, 2001) and Pemiscot County Port Authority - Construction Exemption - Pemiscot, MO, STB FD No. 34117 (served Aug. 26, 2003). Furthermore, AZER acknowledges that the SEA can later require that an EIS be prepared if the EA does not result in a finding that the project will not have significant environmental impacts. We recognize, of course, that such a determination would be subject to re-examination in the event subsequent developments indicated that the level of expected environmental impacts warranted the preparation of an EIS.

Based upon the foregoing, AZER respectfully submits that there is adequate justification for a waiver of the Board's requirement of an EIS. In lieu thereof, AZER requests authorization to proceed with preparation of an EA for the proposed rail project.

Please contact me if you have any questions or need additional information.

Sincerely yours,



John D. Heffner