

March 31, 2008

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**VIA FACSIMILE**

Ms. Diana F. Wood  
Surface Transportation Board  
Case Control Unit  
395 E Street SW  
Washington, DC 20423

Re: STB Finance Docket No. 34836

Dear Ms. Wood:

This firm represents Chris and Debbie Claridge, who own approximately 1300 acres in and around the project study area identified in the "Draft Environmental Assessment for the Arizona Eastern Railway ("AZER") - Construction and Operation - in Graham County, Arizona" (the "Draft EA") prepared by the Surface Transportation Board's ("STB") Section of Environmental Analysis ("SEA").

The Claridge family has owned, operated and lived on this land for more than a century. The Claridges wish to make clear that they do not stand in opposition to the development of the Safford area nor necessarily to the concept of the rail line. The Claridges do have concerns about the process as it has been conducted to date and the chosen alternative. The Claridges believe that further evaluation of reasonable alternatives and the impacts of these alternatives is necessary to ensure the best future for Arizona, Graham County, Safford and the families who have lived in the area for decades. We reviewed the Draft EA and the attachments thereto with the Claridge family. The following comments to the Draft EA are submitted on behalf of the Claridge family:

**1. The comment period should be extended.**

As stated in our March 24, 2008, correspondence to you, the Claridges requested a 60-day extension to the comment period to allow the Claridges and others more time to review the complex and lengthy (several hundred pages long) Draft EA and to assess the potential impacts to the Claridges, who are significant owners of land in the project study area. We received the Draft EA on March 19, 2008, leaving just eight business days for review and preparation of comments.

Given the size and complexity of the Proposed Action (as defined in Section 1.5 of the Draft EA) and the potentially significant impacts of this Proposed Action on the current and planned uses of the Claridges' property, a 60-day extension is warranted and appropriate in this matter. The Claridges have informed us that numerous other interested parties only recently became aware of the Draft EA and have not had the opportunity to review and comment on it.

In addition, an extension will allow all commenters the opportunity to provide comments that are targeted, specific, and meaningful to assist the SEA and the STB in reviewing the Proposed Action and its evaluation of whether an EIS is in fact required.

**2. Environmental impacts associated with Airport development must be considered so long as the Airport is a critical component of the purpose and need for the Proposed Action.**

According to the Draft EA, this Proposed Action is needed to provide the Dos Pobres Mine and the Safford Regional Airport with an alternative to truck shipment of materials. ES-1; 1-3. The Draft EA eliminated alternatives to the chosen rail line path because those alternatives did "not meet the objective of proximity to Safford Municipal Airport, such that the proposed rail line could someday serve a business park adjacent to the Airport." 2-13. Further, the EA process failed to consider alternatives that would result in a shorter, more direct route between the existing mainline and proposed terminus at the mine. For example, a route interconnecting with the railroad approximately 2 miles west of the route selected in the Proposed Action would result in a much shorter route and reduced impact to existing agricultural lands. In addition, the Draft EA focuses on beneficial impacts associated with the Proposed Action without considering detrimental impacts.

Despite reliance on the Airport connection as a reason for the Proposed Action, the Draft EA does not take into account **any** environmental impacts associated with service to the Airport area "because business park development details are unknown at this time." ES-2; *see also*, 2-4 ("Due to the uncertainty of the development of this business park area, this EA contemplates neither rail spurs nor separate rail trips associated with the potential business park."). The Draft EA must either analyze providing rail service to the Airport area in its entirety, evaluating beneficial **and** detrimental impacts, or the Airport rail service should not be considered at all in citing the line and certainly should not be a determining factor in locating the line.

Under 40 CFR §§ 1508.7 and 1508.8, direct and indirect effects and cumulative impacts, both beneficial and negative, associated with the Airport development must be considered in the EA or the EA must delete the Airport from the purpose and need for the Proposed Action. By only identifying potential beneficial impacts, ignoring potential negative impacts and disregarding reasonable alternatives, the Draft EA is an inaccurate and incomplete picture of the Proposed Action and fails to achieve its statutory and regulatory mandate.

**3. Additional alternatives should be considered.**

As noted in Section 2, the EA process failed to consider any alternatives that would result in a shorter, more direct route between the existing mainline and proposed terminus at the mine. A more direct route should be considered, particularly in light of the uncertainty of future Airport development. This direct alternative could be designed to allow a spur to the Airport if and when that development materializes.

Additionally, other alternatives should be considered south of the Gila River to minimize burdens on private landowners. In the Draft EA, the only alignment considered south of the Gila River (Action Alternative and Alternative B) bisects multiple parcels owned by the Claridges.

**4. 49 CFR §1105.6 presumes that an EIS will be prepared for new rail lines.**

Under 49 CFR §1105.6, an environmental impact statement generally is required for rail construction proposals unless they involve: (1) construction of a connecting track on **existing right of way or property owned by the connecting railroads**; (2) abandonment of a rail line; (3) discontinuance of passenger train or freight service; or (4) an acquisition, lease or operation under 49 USC §§ 10901 or 10910. None of these exceptions is present, and no justification exists for not performing an EIS. By not doing so, SEA is recommending that the STB ignore its own regulations.

Other than generalized comments found on Page ES-7, the main text of the Draft EA is silent on the reasons for failing to follow this regulatory mandate and provides no justification or explanation for preparing an EA rather than an EIS. This is particularly inappropriate given that: (1) the Draft EA acknowledges that the Proposed Action will have adverse effects (*See, e.g.*, 4-18), (2) the Draft EA does not consider all the possible impacts of the Proposed Action (*See* Sections 2, 5 and 7 of this letter) and (3) the Draft EA does not include all the necessary cooperating agencies (*See*, Section 6 of this letter).

**A. The stated reasons for not preparing an EIS are inadequate.**

The claimed justification is found in Appendix I, in a letter from SEA to the Office of Railroad Development. In that letter, SEA asserts:

The potential environmental effects of the proposed construction and operation are likely to be minimal because the rail line would be located primarily on land owned by Phelps Dodge, only one highway would be crossed only one waterway would be crossed, and any potentially adverse environmental impacts could be mitigated.

This statement is conclusory and lacks technical or legal support. An EIS is required for “major Federal actions significantly affecting the quality of the human environment.” 42 USC § 4332(2)(C). Under the Council on Environmental Quality’s (“CEQ”) National Environmental Policy Act (“NEPA”) regulations:

Significance varies with the setting of the Proposed Action. For instance, in the case of a site-specific action significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant. 40 CFR § 1508.27(a).

With respect to the setting of this Proposed Action, the impacts are significant. First, while the Draft EA fails to identify how much of the Proposed Action is on private land held by third parties, it does note that farmland impacts to third parties such as the Claridges will exceed the impacts to farmland owned by Phelps Dodge. This in itself is significant and warrants more in-depth review. Second, while only one highway will be crossed, it is the **only** major east-west state highway providing access between significant communities in this part of the state. It is a significant transportation artery for both commercial and personal travel in Safford and the traffic is anticipated to increase significantly due to proposed future development. This also warrants more in-depth review and scrutiny. And finally, while only one waterway will be crossed, that waterway is the Gila River. In this area the Gila is a perennial waterway, a rarity in the arid Southwest. The proposed crossing is a significant one, 1600 feet long, requires a cut of 48 feet (the size of a 5 story building) and 44 feet of fill. The construction will require over 15 concrete pillars to a depth up to 115 feet – in the riverbed. This is no small project. Further, there appears to have been no consideration of a previous bridge washout at this location or any analysis of why that bridge was not rebuilt. The potential for flooding was given little consideration, but it is an issue of primary concern to neighboring landowners.

**B. An EIS is typically prepared for similar projects.**

A brief review of Environmental Matters on the STB website reveals a number of rail construction projects similar in scope to the Proposed Action for which STB required an EIS, including, but not limited to, the following:

- Alaska Railroad - Port MacKenzie Rail Extension: 30 to 45 miles of new rail construction with one round trip per day.
- Southwest Gulf Railroad: Seven miles of new rail construction with two round trips per day.
- Bayport Loop: 12.8 miles of new rail construction with one round trip per day.

The Proposed Action will have a similar length to two of the above-noted projects and will have similar usage to all three. In addition, the Proposed Action will cross the **only** east-west highway in the area, will cross the **one** perennial river in the region, and will carry substances potentially

harmful to the public and the environment if spilled. As a result, the Proposed Action requires the in-depth analysis afforded by the EIS process.

**5. Because this Proposed Action is related to the Dos Pobres/San Juan Project, NEPA requires that all impacts be considered.**

Because the primary purpose and need for the Proposed Action is to serve the Dos Pobres/San Juan Project, the two projects are connected actions. Accordingly, they should be discussed in the same environmental impact statement under 40 CFR §1508.25(a)(1) to provide a complete and accurate picture of the impacts of this Proposed Action.

The Draft EA considers only incremental impacts to resources such as land use, visual resources, traffic, noise, air, etc., rather than comparing current conditions resulting from truck traffic with other impacts that could occur as a result of these connected actions.

This is an inadequate assessment of the Proposed Action's true impacts. For example, even though the Proposed Action will result in 163 tons per year of NO<sub>x</sub>, the Draft EA asserts this is not significant when compared to truck traffic and therefore no mitigation is necessary. However, no detailed analysis is provided to support this conclusion. The proper comparison should include the Proposed Action, other rail line paths, a truck alternative, and other alternatives.

Additionally, the indirect effects and cumulative impacts of the Mine should be addressed in this Draft EA under 40 CFR §§ 1508.7 and 1508.8.

**6. The U.S. Army Corps of Engineers should be a cooperating agency.**

The Draft EA implies that a Nationwide Permit may be available to authorize construction of the 1600 foot bridge crossing the Gila River. That is highly unlikely. Nationwide Permit #14 authorizes linear transportation projects that cause loss of no more than ½ acre of waters of the United States. The Draft EA states that there are approximately 9.7 acres of perennial waters associated with the Gila River crossing. 3-36.

Additionally, the proposed bridge is a massive structure. According to the Bridge Design report found in Appendix D to Appendix D, the bridge will have abutment pillar depths of 60 feet to 115 feet, will use 15 piers that vary in height from 20 feet to 61 feet, and will require a 30 to 40 foot wide access road within the Gila River during construction. According to the Draft EA, "extensive grading is anticipated" at the Gila River crossing. 2-6. This includes cuts up to 48 feet deep and fills up to 44 feet high. 2-7. These distances are the equivalent to the height of a four to five story building.

Accordingly, SEA must identify what circumstances justify a Nationwide Permit or must include the U.S. Army Corps of Engineers in the current environmental review process. Combining the review processes into one process rather than having multiple federal agencies conduct multiple reviews will save both the federal government and affected stakeholders time and resources and will allow for a comprehensive review of the Proposed Action.

**7. The analyses of resource impacts are conclusory and inadequate.**

The analysis of impacts to land use, biological resources, cultural resources, air quality, water quality, visual resources, and noise do not meet the requirements of STB's own regulations under 49 CFR §§ 1105.1 to 1105.12, the CEQ's regulations under 40 CFR §§ 1500.1 to 1508.28, or the statutory framework under 42 U.S.C §§ 4321 to 4379(f). Time limitations preclude our preparing a comprehensive list of concerns. However, even our abbreviated review supports the conclusion that an EIS is required to provide the necessary hard look at environmental impacts. Examples of the concerns include the following:

**A. The Draft EA fails to consider impacts associated with increased rail traffic on the mainline.**

According to the Draft EA, the increased traffic on AZER's mainline falls below the threshold for analysis under 49 CFR § 1105.7(e)(5)(i)(A). This statement is legally incorrect and lacks factual support.

Section 1105.7(e)(5)(i)(A) applies to air quality analyses only. It does not establish a threshold for analysis for other environmental resources. Accordingly, under 49 CFR § 1105.7 and the CEQ's regulations, SEA should have considered impacts associated with increased traffic on AZER's mainline.

Additionally, as a factual matter, the Draft EA must quantify the rail traffic anticipated with the Airport development or remove it as a purpose and need for the Proposed Action. Without quantification of Airport traffic, SEA cannot determine whether the thresholds for air quality analysis in Section 1105.7(e)(5)(i)(A) have been met.

**B. The Draft EA does not sufficiently analyze the Proposed Action's impacts to land use on private lands.**

In Graham County, only 7% of land is held in private ownership. The Graham County Comprehensive Plan requires an evaluation of all new projects to determine the impact on private landowners.

However, the Draft EA contains only a cursory analysis of existing private land uses and provides no analysis of future land uses, other than identifying potential beneficial impacts associated with the undefined, unanalyzed Airport development.

The Airport is not the only entity planning for the future. Private landowners are doing the same, and the Draft EA should consider the impact of this Proposed Action on current and future land uses. For example, the Claridges plan to develop their properties that front Highway 70 with commercial and industrial development and accordingly have begun the entitlement process with Graham County to effect these developments. The Proposed Action will place half of the rail construction staging areas on the Claridges' land and will sever some of the Claridges' properties from access to the highway. An analysis of the environmental consequences of the project cannot be complete without consideration or mention of such significant impacts.

**C. The discussion of the mitigation measures to address flooding on the Gila River is cursory and wholly inadequate.**

The Draft EA notes that the Gila has the potential for large and violent floods. 3-23. It also notes that the Proposed Action will cross a 1.5 mile wide section of designated Zone A floodplain. 4-19. It even admits that the Proposed Action may alter natural drainage patterns. *Id.*

Yet, the only mitigation measure proposed in the Draft EA is the Graham County floodplain permitting process. This is not a mitigation measure but an applicable requirement of another jurisdiction. This so-called mitigation will further destroy the ability to use land held in private ownership by making more of it floodplain. As noted in the Draft EA, the purpose of the county permitting process is not to impose environmental mitigation measures, but to make sure that construction activities do not divert or alter flows in a way that would harm public health and safety. 4-19. As a result, the county permitting process cannot be relied on to meet the NEPA obligation to identify impacts to various environmental resources and identify mitigation measures to reduce those impacts. In fact, the proposed "mitigation" does **nothing** to reduce impacts, but merely strives to legalize them.

There are many potential impacts associated with flooding that need to be addressed, including but not limited to, the following:

- Bridges on the Gila in this immediate region have washed out in the past. What mitigation measures can be adopted to ensure that will not occur with this bridge?
- Were adequate hydrological and engineering studies performed in designing and locating the bridge structure?
- Significant construction activities will occur within the Gila River riverbed and floodplain. What mitigation measures can be adopted to reduce the threat to the Proposed Action and surrounding properties as a result of potential flooding during construction and operation of the Proposed Action?

- The Draft EA notes historic dumping along the river (3-32), including possible hazardous waste. What effect will bridge construction and operation have on these areas? What mitigation measures can be adopted to reduce potential impacts?

An EIS is required to provide a complete review and discussion of the potential for flooding and the impact of this flooding on surrounding properties as a result of bridge construction. With only an EA, the environmental consequences of the Proposed Action cannot be fully analyzed.

**D. More analysis of hydrologic impacts is necessary.**

In addition to the concerns with Gila River flooding, there are other hydrological concerns that should be addressed as part of this process, including, but not limited to, the following:

- How will bridge construction and operation affect streamflow in this perennial stretch of the Gila River?
- The underground supports for the bridge will be substantial. How will bridge foundation construction and operation affect subflow in the Gila River? The issue of subflow has been the subject of over 70 years of litigation in the state of Arizona.
- Many landowners rely on groundwater wells for residential and agricultural needs. What effect will the Proposed Action have on groundwater?
- How will the Proposed Action affect property on the east and west banks of the San Simon River?

**E. The discussion of visual resources is conclusory and wholly subjective.**

According to the Draft EA, visual impacts would be minimal and no mitigation would be required because impacts “would be borne primarily by the private property owner.” 4-15. This is a technically insufficient analysis of visual impacts and an unlawful justification for failing to require mitigation.

A visual resources analysis requires objective consideration of the number and type of observers (including private landowners) and the effects of the Proposed Action. Because the visual resources discussion in the Draft EA lacks any scientific basis, STB should use a standard visual resources analysis tool such as BLM’s Visual Resources Management System to objectively assess the impacts of the Proposed Action and all the alternatives.

The railroad bridge provides a good example of why an objective assessment is needed. This massive structure will be 1600 feet in length, with 15 piers varying in height from 20 feet to 61 feet, and will require cuts and fills in excess of 40 feet. Given its great size and location near the highway, it will be readily observable to numerous viewers. However, even if the number of observers were small, the contrast of this large structure with the surrounding natural scenery

will be strong, and the resulting impact on these observers will be significant, particularly in light of the fact that the Draft EA requires no mitigation to this visual impact.

**F. The Draft EA provides no analysis of safety impacts and only a cursory analysis of traffic impacts.**

Under 49 CFR §1105.7(e)(7), the environmental analysis must consider fully the effects of the proposed action on public health and safety. The Draft EA fails to do so in multiple respects, including the following.

The traffic analysis is incomplete and unclear. For example, it fails to explain why the Safford projected growth rate is 2.5%, but the traffic growth rate is only 1.85%.

The stated impact also is misleading. According to the Draft EA, the average delay per vehicle would only be 18-19 seconds. 4-9. However, Appendix F notes that the train itself will cause a maximum 163 second delay. The Draft EA does not explain this internal inconsistency. More importantly, the Draft EA fails to analyze or address a three-minute delay on first responders. Will they have alternative routes? How long will they be delayed? Is such a delay life threatening in a medical emergency? These are significant health and safety concerns that reinforce the need for a full EIS analysis of the Proposed Action.

Another concern is that the Draft EA does not consider the eventuality that a train will block the crossing for an extended period of time. This is the only major east-west state transportation artery in the region, the only route between many communities in this rural region of Arizona, and the principal route for commercial and personal transportation in the area. What alternative routes are available to detour traffic? What effect will that traffic have on the surrounding areas? A major blockage with associated traffic delays could have significant financial impacts on the region.

The Arizona Department of Transportation recommended a bridge or underpass for the Highway Crossing. The Draft EA overrules the state agency charged with transportation planning and safety, but does not fully document the reasons for doing so. At a minimum, this requires a comparison of the environmental impacts of the various alternatives, which is properly performed through the EIS process.

The Draft EA asserts that the rail line will result in a reduced potential for accidents when compared to truck traffic. (4-24). This is not a valid or accurate comparison, because there is no analysis in the Draft EA of the current truck traffic associated with the Mine. The proper comparison must include a detailed analysis of the current conditions, travel by truck, travel by rail, and other reasonable alternatives.

Even if the potential for accidents would be reduced when compared to truck transport, what are the relative impacts and consequences of a train accident or a truck accident? What are the consequences of one or more rail cars of sulfuric acid or copper concentrate derailing, perhaps into a flowing Gila River? The Draft EA does not fully identify and quantify the impacts to land air quality, water quality, and other resources that would occur in the event of such an accident.

**Conclusion**

On behalf of our clients, we appreciate the opportunity to comment on the Draft EA. We trust that you will review these comments in light of the short time frame available to prepare this response. The concerns expressed herein are weighty. The Proposed Action is significant. This project and the community it will impact deserve the full review afforded by an EIS.

We look forward to working with you and the other impacted parties to ensure the best possible future for this important region of our State. We request that you notify us when a new environmental review document is available for review.

Very truly yours,



Carla Consoli

CC/rb  
cc: Graham County Board of Supervisors