



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

August 23, 2007

John D. Heffner, PLLC
1920 N Street N.W.
Suite 800
Washington, DC 20036

Re: STB Finance Docket No. 34836, Arizona Eastern Railway – Construction and Operation – In Graham County, Arizona: Response to EIS Waiver Request

Dear Mr. Heffner:

Pursuant to 49 CFR 1105.6(d), the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) is granting your request of June 28, 2007 for a waiver of 49 CFR 1105.6(a), which generally provides for the preparation of an environmental impact statement for a rail line construction proposal. We are granting the requested waiver based on available information gathered to date, including materials filed by the applicant, SEA's consultation with tribes, and Federal, state and local agencies, and a site visit with CirclePoint, Inc., the approved third-party consultant that has the responsibility of assisting SEA in preparing the environmental analysis and appropriate environmental documents our environmental consultant for this proceeding.

By petition filed on August 4, 2006, Arizona Eastern Railway's (AZER) seeks an exemption from the Board under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate a 12-mile rail line in Graham County, Arizona. The proposed line would start at the connection with AZER's existing rail line at Safford, AZ, pass the Safford Municipal Airport, and terminate at Phelps Dodge Mining Company's (Phelps Dodge) Dos Pobres/San Juan Mine currently under construction. Principal commodities to be handled include sulfuric acid, copper and copper-related products.

AZER examined other alternatives but concluded that all but the proposed alignment are infeasible due to environmental, land use, and engineering constraints. Initially, the proposed rail line would serve only the mine. However, the City of Safford commented that a planned industrial park adjacent to the airport could generate a need for rail service. In addition, AZER believes that rail service could be expanded further to support the planned increase in airport operations, as envisioned in the Safford Regional Airport Master Plan Update (City of Safford 1989).

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Based on the information available to date, we believe that the proposed action would not result in significant environmental impacts and that any impacts can most likely be addressed through appropriate mitigation measures. Therefore, for the reasons listed below, we believe the preparation of an environmental assessment (EA) is the appropriate level of environmental documentation:

1. The proposed alignment would cross only two public roads, U.S. Highway 70, which experiences an average daily traffic flow of approximately 5,900 vehicles, and Airport Road, which has an average daily traffic volume of 425 vehicles.¹ AZER indicates that it would install automatic traffic signals and gates at the U.S. Highway 70 crossing and further evaluate whether the same would be needed for the Airport Road crossing.
2. The existing land use in the immediate vicinity of the project is largely agricultural.
3. Projected traffic on the proposed line would be two trains per day or 730 trains per year, all of which would otherwise be moved by highway. There would be no diversions of existing freight or passenger traffic to or from other systems or modes.
4. There would be no significant impact to local or regional air quality. The Arizona Department of Environmental Quality has determined that Graham County is in attainment for national ambient air quality standards and therefore, in conformance with the Arizona State Implementation Plan.
5. The Arizona Game and Fish Department (AGFD) has determined that the proposed alignment is located within Designated Critical Habitat for the Southwestern Willow Flycatcher (*Empidonax traillii extimus*) and the Razorback Sucker (*Xyrauchen texanus*) within a three mile radius of the Gila River. AZER retained WestLand Resources, Inc. (WestLand) as its contractor to complete surveys of the endangered species (peer reviewed by CirclePoint), which to date, reveal that the Willow Flycatcher has no permanent nesting sites. There are no records of Razorback Sucker within this reach of the Gila River. However, if construction of the proposed alignment were to proceed, AZER indicates that it would implement mitigation measures for the Willow Flycatcher and the Razorback Sucker as specified by AGFD and the U.S. Fish and Wildlife Service.

¹ Based on 2005 Arizona Department of Transportation (ADOT) data for Milepost 341.85 to Milepost 344.37, the only segment on US Highway 70 that includes the proposed rail crossing.

6. AZER retained WestLand to file and obtain a permit from the U.S. Army Corps of Engineers (USACE) pursuant to Section 404 of the Clean Water Act. AZER has stated that it will comply with any permit conditions imposed by USACE. In September 2006, WestLand completed a preliminary Jurisdictional Delineation (JD) of waters of the U.S. (peer reviewed by CirclePoint) along the alignment and submitted it to the USACE. The proposed JD is under review. Potential jurisdictional waters crossed by the alignment include the Gila River and numerous ephemeral washes. WestLand indicates that no jurisdictional wetlands have been identified along the Gila River. The total area of delineated jurisdictional waters associated with the Gila River crossing is approximately 10.2 acres for ephemeral drainages and 9.7 acres for perennial waters.
7. The Preferred Alignment would cross 100-year flood zones at five locations, as identified on Flood Insurance Rate Maps published by the Federal Emergency Management Agency (FEMA). Specifically, the Project area traverses an approximately 1.5 mile section of designated floodplain associated with the confluence of the San Simon and Gila Rivers and would also cross several washes; all of which are designated by FEMA as a Zone A 100-year flood zone.² The approximate width of Zone A varies from 180 feet to approximately 440 feet. AZER indicates that the bridge at the Gila River would be designed and sized to comply with the Graham County Engineer requirements including those developed to minimize impacts to the 100-year floodwater elevations.
8. The Arizona State Historic Preservation Office (SHPO) stated that portions of the project area have not been surveyed and may contain prehistoric/historic archaeological resources. At the request of the SHPO, a class III cultural resources inventory was completed in February 2007. The survey resulted in the identification of 18 isolated occurrences of artifacts or cultural features and seven new archaeological sites. The Area of Potential Effect (APE) crosses three previously recorded linear sites including the Arizona Eastern Railroad, US 666/191 and Union Canal. The National Register of Historic Places eligibility of four sites could not be determined from surface evaluations alone, therefore SEA will be conducting eligibility testing once final engineering has been completed and a Treatment Plan has been prepared. Although SEA is still in the process of making final National Register determinations for the historic properties, the proposed action would likely result in adverse effects, including direct impacts, to some National Register eligible sites. In April 2007, SEA sent a copy of the

² Zone A is the flood insurance rate zone that corresponds to the 100-year floodplain that is determined by approximate methods. Because detailed hydraulic analyses have not been evaluated for such areas, the zone does not include base flood elevations or depth. This zone requires flood insurance.

document to eleven agencies and ten Indian Tribes for comment. Formal comments were received from the Arizona Department of Transportation, Arizona State Museum, Fort Sill Apache Tribe, Gila River Indian Community (GRIC), and Salt River Pima-Maricopa Indian Community. GRIC commented that it has interest in three sacred traditional cultural places that are currently subject to a conservation easement from the Phelps Dodge Corporation. Although the sites are not within the APE, GRIC has requested Section 106 consulting party status. SEA concurs with GRIC's request, given that any changes to the proposed alignment could impact the cultural resources, and has therefore granted the organization consulting party status. To date, no other Section 106 issues have been identified.

9. Other Federal and state agencies did not identify any significant issues during the agency consultation process.
10. SEA and CirclePoint staff did not identify any significant issues during the site visit in July 2006.

After the EA is prepared, SEA will make the document available for public review and comment. Once the comment period is concluded, SEA will prepare a Post EA discussing the comments received and including any appropriate modifications to its existing analysis or additional analysis. The Post EA will also set forth for the Board SEA's final recommended mitigation measures. The Board will then consider the EA, the public comments, and SEA's Post EA recommendations before making its final decision in this proceeding. Should the process disclose unanticipated impacts that are significant, we will require the preparation of an EIS at that time.

If you have any questions, please do not hesitate to contact me or Diana Wood, SEA Project Manager at 202-245-0302.

Sincerely,



Victoria Rutson
Chief
Section of Environmental Analysis

cc: Scott Steinwert, CirclePoint
John Cook, CirclePoint