



Surface Transportation Board
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The Honorable Greg Stanton
207 Cannon House Office Building
Washington, DC 20515

The Honorable Mark Kelly
516 Hart Senate Office Building
Washington, DC 20510

The Honorable Debbie Lesko
1214 Longworth House Office Building
Washington, DC 20515

The Honorable Juan Ciscomani
1429 Longworth House Office Building
Washington, DC 20515

The Honorable Andy Biggs
252 Cannon House Office Building
Washington, DC 20515

The Honorable Elijah Crane
1229 Longworth House Office Building
Washington, DC 20515

The Honorable David Schweikert
460 Cannon House Office Building
Washington, DC 20515

The Honorable Paul A. Gosar
2057 Rayburn House Office Building
Washington, DC 20515

Dear Senator Kelly and Representatives Stanton, Lesko, Ciscomani, Biggs, Crane, Schweikert and Gosar:

Thank you for your recent letter regarding the Surface Transportation Board's (Board) review of the proposed Pecos Industrial Rail Access Train Extension (PIRATE) project in Union Pacific Railroad Company—Construction and Operation Exemption—In Maricopa County, Ariz., Docket No. FD 36501. I appreciate hearing your views about the positive economic and environmental impacts this project could have on Arizona communities.

As you know, on June 30, 2022, Union Pacific Railroad Company (UP) filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a new rail line in Maricopa County, Arizona (the Line). The Board found that the petition raised issues that required further consideration and instituted a proceeding under 49 U.S.C. § 10502(b).

UP was told by the Board's Office of Environmental Analysis (OEA), in September of 2022, that there were a number of significant archaeological sites located within the project's Area of Potential Effect (APE). UP subsequently participated in meetings about the project's adverse effect to cultural resources and the need to develop a Memorandum of Agreement setting out a process to mitigate adverse effects to historic resources. Railroads cannot alter the project area for a proposed rail line construction until environmental and historic review has been completed and the Board has authorized the project. Unfortunately, in December of 2022, UP, through third-party contractors, allowed for construction activities to take place without the knowledge of

the Board. Last year, while preparing the Final Environmental Assessment (Final EA) for the project, OEA discovered that there had been significant ground disturbance and damage to archaeological resources within the proposed right-of-way and within the project's APE. On August 31, 2023, following meetings with and requests by the Tribal Historic Preservation Officer of the Tohono O'odham Nation and other affected Tribes, OEA issued a notice delaying issuance of the Final EA until further notice.

In order to ascertain the extent of the damage, in December 2023, the Board directed UP to provide documents and information relating to the ground disturbances that occurred within the designated archaeological sites. The Board also set a briefing schedule for submissions on the issue of whether UP engaged in "anticipatory demolition" of historic properties in violation of Section 110(k) of the National Historic Preservation Act (NHPA).

Pursuant to a Board-granted extension, UP made rolling submissions, ending on February 15, 2024, which included written responses to the information requests and the production of just over 1,000 documents totaling more than 10,000 pages. Given the volume and complexity of the material submitted, the Board found that additional time was needed to review the record and assess the substance and sufficiency of UP's responses. Today, the Board issued a further decision requiring UP to cure certain deficiencies in its earlier responses. That decision also reinstated the schedule for submissions on the "anticipatory demolition" issue.

As I stated in my concurrence with today's decision, the delay in moving this project forward falls squarely on UP. UP failed to protect the culturally sensitive resources on its property and within the PIRATE project's APE. Furthermore, its actions allowed over 19 acres of Tribal lands to be disturbed and caused significant cultural damage. The Board takes this matter very seriously and will not compromise the time needed to appropriately investigate this matter. The Board will do everything it can to ensure that the egregious errors that have caused the delays in this proceeding will not occur again. Because the case remains ongoing, I cannot comment further at this time.

Thank you again for sharing your views with the Board about the proposed PIRATE project. A copy of your letter and this reply have been placed in the docket on the Board's website. If you have any questions, please contact Ms. Janie Sheng, Director of the Board's Office of Public Assistance, Governmental Affairs, and Compliance, at 202-245-0238.

Sincerely,



Robert Primus
Chairman