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June 28, 2007

**HAND DELIVERY**

Ms. Victoria J. Rutson  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
395 E Street, SW - Room 1106  
Washington, DC 20423-0001

**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 this 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. In support of this request, AZER submits the following information:

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 Phelps-Dodge Mining Company's ("Phelps-Dodge") Dos Pobres. San Juan Mine being built near Safford. While this new line will initially serve the Dos Pobres/San Juan Mine, it is also expected to handle

Ms. Victoria J. Rutson  
June 28, 2007  
Page two

additional traffic generated by future customers that may locate at the Safford Municipal Airport as envisioned in the Safford Regional Airport Master Plan, as well as any other customers that locate along or near the right-of-way.

On November 18, 2005 and again on March 9, 2006, AZER representatives, including the undersigned, participated in pre-filing meetings with you and members of your staff, to review the parameters of the proposed construction project and the applicable environmental review procedures and requirements. Subsequently, on February 8, 2006, AZER formally requested approval of its retention of CirclePoint, Inc. ("CirclePoint") to act as independent third party consultant for the preparation of the necessary environmental documentation for the project, under the Board's direction and supervision. On March 3, 2006, your office approved that request.

Following CirclePoint's approval, AZER retained WestLand Resources, Inc. ("WestLand"), to act as its own consultant with respect to environmental impact issues associated with procuring a Clean Water Act Section 404 permit from the Army Corps of Engineers. WestLand is responsible for conducting field surveys for biological and cultural resources along selected alternative alignments. WestLand personnel are providing CirclePoint with data for CirclePoint's review and analysis, under the terms of a Memorandum of Understanding that was entered into by CirclePoint with AZER and SEA and approved by the SEA. Circle Point will coordinate the National Historic Preservation Act Section 106 consultation with the State Historic Preservation Office and the Endangered Species Act Section 7 consultation with the US Fish and Wildlife Service on behalf of the SEA. CirclePoint has conducted a field survey of the region that would be affected by the proposed rail project, including in particular the routing that is preferred by AZER and will most likely be presented as the proposed route for the new line.

The Board's regulations provide that an EIS normally is prepared in connection with a rail construction project. See 49 C.F.R. Part 1105.6(a). However, 49 C.F.R. Part

Ms. Victoria J. Rutson  
June 28, 2007  
Page three

1105.6(d) provides for flexible exceptions to the general rule:

The Board may reclassify or modify these requirements for individual proceedings ... {I] n a rail construction, an applicant can seek to demonstrate (with supporting information addressing the pertinent aspects of 49 § 1105.7(e)) that an EA, rather than an EIS, will be sufficient because the particular proposal is not likely to have a significant environmental impact.

AZER respectfully submits that an EA is sufficient in this case under the standards of 49 C.F.R. Part 1105.6(d), because the subject construction project is not likely to have a significant environmental impact. By reference to the specific elements of 49 C.F.R. Part 1105.7(e), and supported by the results of the CirclePoint field survey noted above, our reasons are as follows:

(1) Proposed action and alternatives

If built along AZER's preferred alignment, the proposed line is only 12.1 miles in length, and initially is expected to handle a total of two trains each day (one daily roundtrip) seven days per week between the junction of the proposed new line and AZER's existing line at a point known as Lone Star Junction outside of Safford and the end of the line at the Safford Mine. The principal commodities that will be handled over the line initially include sulfuric acid and copper and copper-related products.

The purpose of the proposed action is to provide rail service access to the Dos Pobres/San Juan Mine. Initially, AZER examined several different right-of-way alignments but rejected all but the proposed alignment for various reasons. It rejected as unacceptable the alternative alignments as undesirable from the perspectives of transportation policy, property acquisition requirements, and construction engineering and environmental impacts.

Ms. Victoria J. Rutson  
June 28, 2007  
Page four

(2) Transportation system

The proposed action will provide the Dos Pobres/San Juan Mine and Safford Municipal Airport with the only available rail service. 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. AZER would install automatic crossing signals and gates to protect that crossing.

The one daily roundtrip operated over the proposed line represents entirely new traffic, all of which would otherwise move by highway. There will be no diversions of existing freight or passenger traffic either to or from other transportation systems or modes.

(3) Land use

Major land uses in the affected area include grazing and agricultural uses, streams and associated regulatory flood plains, and utility corridors. Much of the area that would be affected by the proposed action is rangeland and agricultural, and the proposed action is not expected to adversely affect or conflict with existing land use plans or local zoning.

Between 140 and 150 acres of land would be required for the right-of-way. The right-of-way width is anticipated to be about 100 feet. Appearing as Exhibit A on the accompanying CD-ROM is a set of photographs taken by AZER's environmental consultant, WestLand, depicting various representative segments of AZER's proposed alignment.

(4) Energy

The proposed action will result in new rail traffic and, thus, a modest net increase in energy use for train operations. Based on an average of one roundtrip per day, seven days per week, it is estimated that 730 trains would operate over the proposed line each year.

Ms. Victoria J. Rutson  
June 28, 2007  
Page five

Any natural gas or petroleum pipelines or major transmission lines crossed by the new track would be protected using a combination of land bridges, encasements and relocations in accordance with established industry standards. The proposed action will have no adverse effect on recyclable commodities, and may have a positive impact if recycled rail or crossties are used in the construction process. No diversions of existing traffic from rail to motor carriage are expected to occur.

(5) Air

No significant impact to local or regional air quality is expected. According to 40 C.F.R. Part 81.344 and the (identify the name of the Arizona state agency concerned with air quality issues), the City of Safford and the region encompassing the proposed line currently are in attainment under the Clean Air Act.

(6) Noise

Anticipated traffic volume can be expected to lead to a corresponding increase in noise levels. However there are no sensitive noise receptors located in areas immediately adjacent to the proposed rail line.

(7) Safety

The roadway crossing with U.S. Highway 70 will be protected with automatic signals and gates in accordance with Arizona Department of Transportation standards. Based on AZER's consultant's initial review, gates and flashing lights would be adequate for use at the grade crossings.

The EA will evaluate the traffic level on Airport Road to determine if automatic signals and/or gates are warranted at this crossing.

A preliminary database search performed in accordance with ASTM Standard E1527-00 for Phase I Environmental Site Assessments indicated no hazardous waste sites in the vicinity of AZER's proposed alignment.

Ms. Victoria J. Rutson  
June 28, 2007  
Page six

(8) Biological resources

The majority of land in the area affected by the proposed action is rangeland or agricultural. A review of National Wetland Inventory (NWI) maps did not identify any mapped wetlands that would be impacted by AZER's proposed alignment. WestLand is coordinating with the Army Corps of Engineers to delineate jurisdictional waters and to address jurisdictional issues and/or Clean Water Act permit requirements, and AZER will pursue and secure any permit that may be needed. (see Water resources below)

There are no wildlife sanctuaries or refuges, national or state parks or forests that would be affected by the proposed action. A broad search of databases containing federal and state-listed endangered or threatened species known to occur in habitats similar to those found along AZER's proposed alignment yielded a schedule of 2 animal and zero plant species that will be the focus of investigation during the EA preparation phases. This is a designated critical habitat for two wildlife species in the project area. If and to the extent any of these are found in the area and would be adversely affected by the proposed action, mitigation measures will be developed in coordination with the U.S. Fish and Wildlife Service and the Arizona Game and Fish Department.

No rare or sensitive native habitats were shown by preliminary review to be significantly impacted by the proposed action.

(9) Water resources

The proposed line crosses one body of water, the Gila River, which may be under the jurisdiction of the Army Corps of Engineers. In order to cross this river, it will be necessary for AZER to construct a bridge. AZER encloses as Exhibit B to this letter a copy of the bridge design and a track profile leading to and from the bridge prepared by its bridge engineering firm, HDR Engineering, Inc. If and to the extent necessary, AZER will obtain a permit under Section 402 and 404 of the Clean Water Act for storm water discharges during construction and permanent fill or

Ms. Victoria J. Rutson  
June 28, 2007  
Page seven

discharge into waters of the United States. The preliminary field survey conducted by CirclePoint indicated that the proposed action would have no lasting, adverse impact on surface or groundwater resources within the affected region.

(10) Cultural Resources

The proposed line will traverse an area where previous studies identified cultural resource sites. A project-specific Class III cultural resources report was prepared and reviewed by the SEA; this report found a total of ten potential cultural resource sites, inclusive of three previously identified in other studies. The Class III report indicates treatments specific to each resource, ranging from avoidance to determining eligibility for inclusion in the National Register of Historic Places. SEA will consult with the Arizona State Historic Preservation Office (SHPO) to seek concurrence on appropriate treatment measures to avoid or minimize potential Project impacts.

(11) Geology and Soils

In preliminary geotechnical evaluations, the Project area was found not to include potential geologic hazards, such as areas of subsidence, giant desiccation cracks, landslides, or surface faults. The Project will incorporate features and measures to mitigate for potential seismic activity that is possible in the region.

We believe that the foregoing information should be under 49 C.F.R. Part 1105.6(d) to justify reclassification of the AZER rail project as one requiring only an EA. However, if your office believes that any additional information is needed in order to make that determination, please contact the undersigned.

Respectfully submitted,

  
John D. Heffner

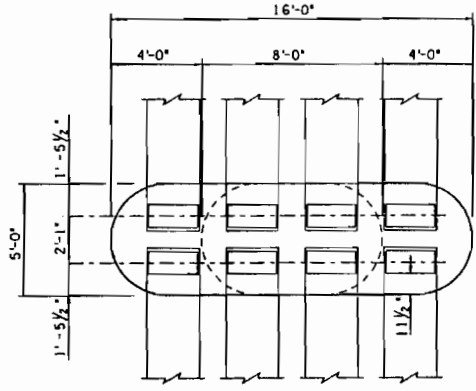
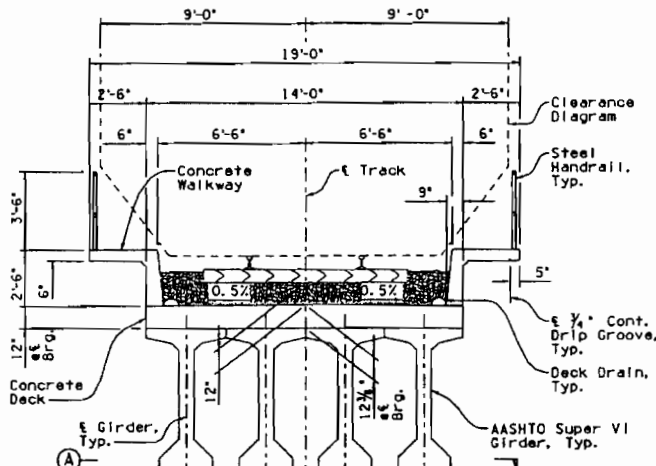
cc: Ms. Diana Wood

Ms. Victoria J. Rutson  
June 28, 2007  
Page eight

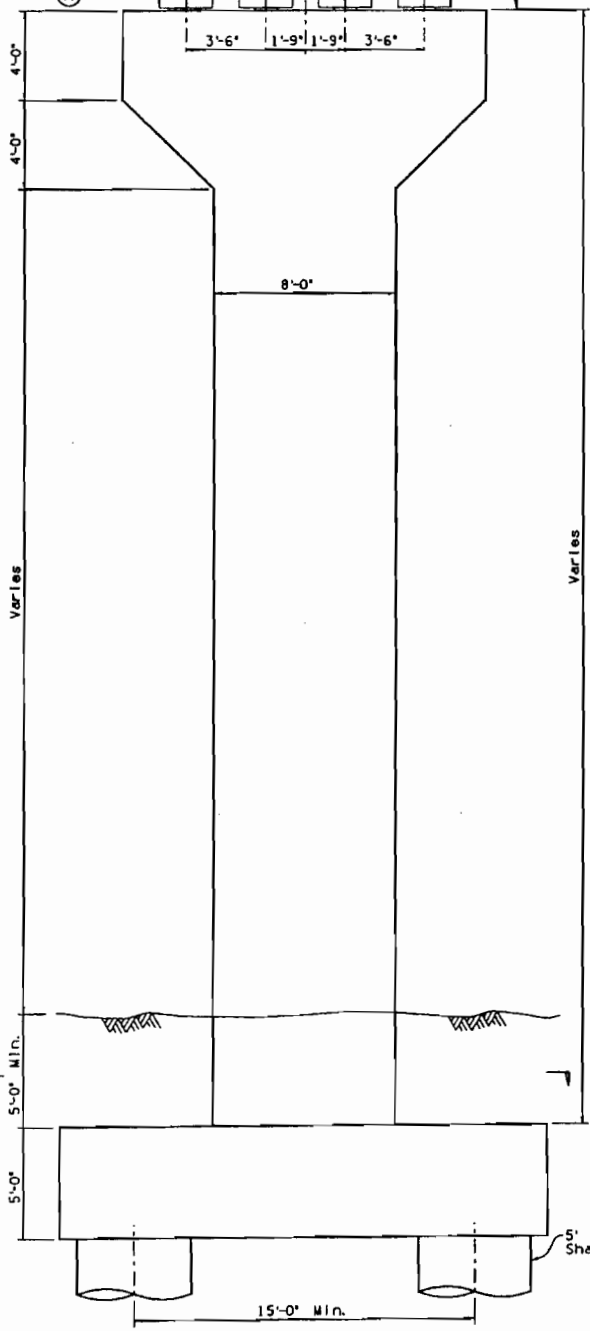
Mr. John Cook  
Ms. Kim Otero  
Mr. Jeffrey Barker  
Mr. Ed Ellis



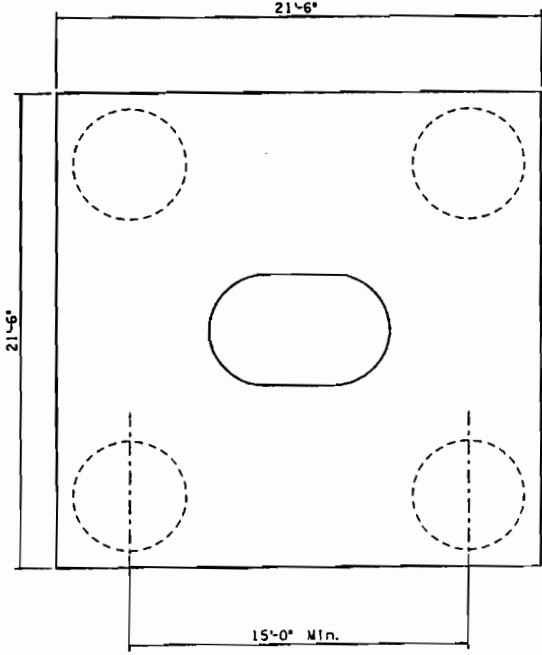




SECTION - PIER PLAN  
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TYPICAL SECTION - AT PIER  
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SECTION - DRILLED SHAFT CAP  
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PRELIMINARY  
 NOT FOR  
 CONSTRUCTION

