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April 6, 2006

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W., Suite 500
Washington, DC 20423



**Re: STB Docket No. AB-1081X, San Pedro Railroad Operating Company, LLC –
Abandonment Exemption – In Cochise County, AZ**

Dear Ms. Rutson:

We are writing on behalf of our client Sonora-Arizona International LLC (“Sonora”) with respect to two (2) letters submitted in the above-referenced proceeding raising environmental concerns associated with Sonora’s offer of financial assistance (“OFA”). The letters have been submitted to the Board by: 1) William Childress, Manager, San Pedro Riparian National Conservation Area, United States Department of Interior, Bureau of Land Management dated March 17, 2006; and 2) Michelle T. Harrington, Rivers Program Director, Center for Biological Diversity dated March 31, 2006 (collectively “Environmental Letters”).

In short, the environmental review the letters request is neither available nor appropriate at this time. The applicable environmental regulations state that environmental laws are not triggered where the Board’s action is nothing more than a ministerial act as in “financial assistance arrangements” including those under 49 C.F.R. § 1152.27. See 49 C.F.R. § 1105.5 (c)(3).¹

The applicable regulations relating to the abandonment of this line and the OFA do not provide an avenue for environmental review of an offer of financial assistance. Because a successful OFA preserves rail operations in an existing corridor, the rules require no environmental review.

¹ 49 C.F.R. § 1105.5 (c)(3) refers to 49 U.S.C. § 10905, which was the home of the text currently found in 49 U.S.C. § 10904 prior to the general amendment of the statute in 1995 by Pub.L. 104-88, § 102(a).

Ms. Victoria Rutson
April 6, 2006
Page 2

The regulations expressly state that offers of financial assistance with respect to abandonment and discontinuance shall be reviewed as follows:

- The Board reviews each offer submitted to determine if a financially responsible person has offered assistance.
- If that criterion is met, the Board will issue a decision postponing the effective date of the authorization for abandonment or discontinuance.
- The decision postponing the authorization for abandonment or discontinuance is issued within 15 days of the service of the decision granting the application (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section, or within five (5) days after expiration of the 120 day (4 month) period described in 49 U.S.C. § 10904, if that occurs first).

See 49 C.F.R. § 1152.27(e). Moreover, if an agreement is reached relating to the offer of financial assistance the regulations state that **“the Board will approve the transaction and dismiss the application for abandonment or discontinuance.”** 49 C.F.R. § 1152.27(f)(2) (emphasis added).

The regulations do not need to provide for an environmental review in these situations because an OFA involves the continuation of rail service, not the introduction of new rail service to a new area. In the instant action, while the rail line at issue was embargoed, rail service on the line has never been abandoned or discontinued. Moreover, any work that needs to be done on the line² involves work within the existing corridor and as such would not trigger environmental review. *See e.g. Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995) (ICC found that the construction of a new tunnel did not involve construction of an "extension" of the line or an "additional" line and that many carrier improvements to their existing system lie outside agency's jurisdiction); *Port Authority of New York and New Jersey--Petition for Declaratory Order*, STB Finance Docket No. 34428, 2004 STB LEXIS 43 (Service Date: January 21, 2004) (a carrier may, without additional authority from the agency, construct facilities to better provide a service it is already authorized to provide.)

² The work necessary to continue rail service includes, among other things, rehabilitation of track and the restoration of a rail bridge.

Ms. Victoria Rutson
April 6, 2006
Page 3

Accordingly, to the extent the Environmental Letters submitted in this proceeding request any type of environmental review of the effects of Sonora's OFA such a request is improper as the regulations do not allow for such a review *vis a vis* an offer of financial assistance.

If the Board elects to undertake an environmental assessment of the impacts of Sonora's acquisition of this line through the OFA procedures, even though the regulations do not require any such review in this context, then Sonora would request an opportunity to comment on the assertions included in the two Environmental Letters.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", with a long horizontal flourish extending to the right.

Charles A. Spitulnik

cc: Hon. Vernon A. Williams
Mr. William Childress
Ms. Michelle T. Harrington
All Parties of Record