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June 30, 2022

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Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

ENTERED
Office of Proceedings
June 30, 2022
Part of
Public Record

Re: STB Docket No. FD 36501; Union Pacific Railroad Company – Construction and Operation Exemption–In Maricopa County, AZ

Dear Ms. Brown,

Enclosed for E-filing in the above-captioned proceeding is the Petition of Union Pacific Railroad Company for Construction and Operation Exemption under 49 U.S.C. § 10502 from the requirements of 49 U.S.C. § 10901. Pursuant to 49 C.F.R. § 1002.2(f)(12)(iii), the filing fee of \$91,600.00 has been paid via pay.gov. If there are any questions, please contact me directly at (402) 544-4735 or by email at tspratt@up.com.

Sincerely,

Tanya L. Spratt, Attorney for Union Pacific Railroad Company

FILED
June 30, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 30, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36501

UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ

**UNION PACIFIC RAILROAD COMPANY'S
PETITION FOR EXEMPTION**

CRAIG V. RICHARDSON
JAMES B. BOLES
TANYA L. SPRATT
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

*Attorneys for Union Pacific
Railroad Company*

Dated: June 30, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

Pursuant to 49 U.S.C. § 10502, Union Pacific Railroad Company (“UP”) hereby petitions the Surface Transportation Board (“Board” or “STB”) for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately six (6) miles of rail line in connection with its Pecos Industrial Rail Access and Train Extension Project (the PIRATE project) in southeast Maricopa County, Mesa, Arizona (the “Line”). The proposed rail line would connect the existing Pecos Advanced Manufacturing Zone (PAMZ) directly to the UP main line (the UP Phoenix Subdivision) just west of the project area, running six miles through the PAMZ with a terminus at the border between Maricopa County and Pinal County, Arizona.

The proposed rail line would provide rail service to Commercial Metals Company (“CMC”), which has an existing steel micro mill in Mesa. It would also provide rail service to a new steel micro mill that CMC is constructing that is anticipated to be operational in 2023. The proposed line, which cuts through approximately 2,000 acres of industrial zoned land, would also provide an alternate mode of freight transportation to future shippers.

As set forth below, an exemption from the full application requirements is warranted in this case because they are not necessary to carry out the rail transportation policy at 49 U.S.C. § 10101, the proposed construction is limited in scope, and Board regulation is not necessary to protect any shipper from an abuse of market power. UP's proposed rail construction is consistent with numerous decisions of the Board exempting similar transactions from the prior approval requirements of 49 U.S.C. § 10901.

UP respectfully requests that the Board issue a decision granting the exemption expeditiously upon completion of the environmental review.

This Petition is supported by the statement of Barbara R. Smith, Chairman of the Board, President and Chief Executive Officer of CMC, which is included at Exhibit A.

BACKGROUND

A. Description and Purpose of Proposed Line and Planned Operations

UP proposes to construct and operate approximately six (6) miles of rail line in connection with the PIRATE project in southeast Maricopa County, Mesa, Arizona. The PIRATE project is a public/private initiative to fund, engineer, design and construct a six-mile industrial rail branch in southeast Mesa, Arizona. The proposed rail line will serve the transportation and logistics needs of CMC, and open up competitive advantages to new businesses looking to locate/relocate to the area. The PIRATE project encompasses 4,800 acres of agricultural and industrial land primarily situated on the former Williams Air Force Base.

UP has collaborated with the City of Mesa for several years on this project, which is expected to provide far-reaching public benefits by transferring materials away from public roadways onto rail, while also reducing greenhouse gas emissions, local air pollution, highway maintenance costs, and congestion associated with long-haul trucking. Locally, the project will

drive economic growth and expand high-skilled manufacturing job creation in Maricopa County, Arizona. The project has been supported by the City of Mesa, the Arizona Commerce Authority, the Great Phoenix Economic Council, the Arizona Manufacturers Council the Mesa Chamber of Commerce, and other entities and public officials.

The line will allow CMC to receive raw materials and deliver products to its customers by rail. CMC is the largest manufacturer of steel reinforcing bar (rebar) in North America and Central Europe, and also a leading producer in the steel long products market.¹ UP currently serves CMC at other locations in the United States, and the proposed line will serve CMC's facilities in Mesa, Arizona. CMC has an existing steel micro mill in Mesa, and is currently constructing a new steel micro mill in Mesa capable of producing 500,000 tons of rebar and merchant bar products to replace rebar production from a facility that CMC closed in California.² The proposed line will provide rail access to CMC's existing facility and the facility that is being constructed. CMC anticipates that rail access will allow it to receive raw material and deliver products to its customers more efficiently, eliminating an estimated 10,000 trucks per year from current operations and 25,000 trucks per year from its new manufacturing facility in 2023.³

Adding a rail transportation option will allow CMC to expand operations, add high-paying manufacturing jobs, provide its customers a low-cost logistics option, and explore additional multi-modal efficiencies that would benefit the region by reducing truck traffic and congestion.⁴

¹ Statement of Barbara R. Smith (Smith Statement) at 1.

² *Id.* at 2.

³ *Id.* at 2.

⁴ *Id.* at 1-2.

The addition of the proposed line will provide an alternate mode of freight transportation for future customers that could locate along the industrial lead as well.

A map of the proposed rail line is included at Exhibit B.

B. Environmental Review

UP has met with the Board's Office of Environmental Analysis (OEA) on five occasions regarding the environmental and planning considerations for the proposed line, which is not expected to have a significant environmental impact. By letter dated April 1, 2021, UP asked OEA to grant a waiver pursuant to 49 C.F.R. § 1105.10(c) of the requirement under 49 C.F.R. § 1105.10(a) that an applicant meet and provide "written notice of its forthcoming proposal at least six (6) months prior to filing its application."⁵ OEA granted UP's waiver request by letter dated April 30, 2021.⁶ UP has also contracted and received approval for a third-party contractor, Jacobs Engineering Group Inc. ("Jacobs"), to provide assistance with the environmental documentation.⁷ The STB, UP, and Jacobs have also executed a Memorandum of Understanding ("MOU") to ensure that construction of the Line complies with the requirements of the National Environmental Policy Act.⁸

By letter dated March 24, 2022, UP requested a waiver from the requirements of 49 C.F.R. § 1105.6(a) of the preparation of an Environmental Impact Statement (EIS) in favor of

⁵ See EI-31953 (UP letter dated Apr. 1, 2021).

⁶ See Exhibit C.

⁷ See Exhibit D.

⁸ See EI-3672 (MOU).

the preparation of an Environmental Assessment (EA).⁹ A waiver to prepare an EA was granted by OEA on April 21, 2022.¹⁰

UP is working with OEA and Jacobs to support preparation of the Draft EA.

ARGUMENT

Construction and operation of a new common carrier rail line require Board approval under 49 U.S.C. § 10901(a)(1) and (2). However, § 10901(c) directs the Board to authorize construction and operation of a rail line “unless the Board finds that such activities are inconsistent with the public convenience and necessity.” Thus, as the Board has stated, “Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.”¹¹

Under 49 U.S.C. § 10502(a), the Board “shall,” to the maximum extent consistent with the statute, exempt a proposed rail construction and operation from regulation under § 10901 if it finds that (1) such regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

As explained herein, the Board should grant the requested exemption because the proposed rail line construction and operation meet the § 10502(a) exemption criteria. UP respectfully requests that the Board issue a decision granting the exemption expeditiously upon completion of the environmental review.

⁹ See EI-31927 (UP letter dated Mar. 24, 2022).

¹⁰ See Exhibit E.

¹¹ Alaska Railroad—Construction & Operating Exemption—Rail Line Extension to Port MacKenzie, Alaska, FD 35095, at 5 (STB served Nov. 21, 2011), aff’d sub nom. Alaska Survival v. STB, 705 F.3d 1073 (9th Cir. 2013); see also Lone Star R.R.—Track Construction & Operation Exemption—In Howard County, Tex., FD 35874, at 3 (STB served March 3, 2016).

A. Board Regulation Is Not Necessary to Carry Out the Rail Transportation Policy at § 10101

Regulation of the proposed construction and operation is not necessary to carry out the rail transportation policy at § 10101. Rather, granting an exemption will promote several provisions of the rail transportation policy and will not run counter to any of those goals.

Granting the exemption is consistent with the goals at § 10101(4) and (5), to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes to meet the needs of the public, and to foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes. The proposed line will provide alternative transportation options for CMC and future shippers, thus enhancing competition. See Palmetto Railways—Construction & Operation Exemption—In Berkeley County, S.C., FD 36095, at 3 (STB served July 22, 2019) (proposed line would enhance competition by providing a freight rail option that did not previously exist, consistent with § 10101(4) & (5)); Six County Assoc. of Governments—Construction & Operation Exemption—Rail Line Between Levan & Selina, UT, FD 34075, at 3 (STB served Oct. 19, 2001) (proposed line would provide a rail service option to shippers in an area where no rail service exists, thereby increasing competition consistent with § 10101(4)).

Also, consistent with the goals at § 10101(2) and (7), an exemption will minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry. An exemption here will promote these policies by minimizing the time and administrative expense associated with the construction and commencement of operations, which are intended to bring rail service to an area where none currently exists and help promote economic development and growth. See Palmetto Railways, FD 36095, at 3; Six County Assoc.

of Governments, FD 34075, at 3. An exemption is also consistent with the goals at § 10101(15), to provide for the expeditious handling and resolution of proceedings.

In summary, formal approval under § 10901 is not necessary to carry out the goals of the rail transportation policy.

B. The Transaction Is Limited In Scope and Regulation Is Not Needed to Protect Shippers from an Abuse of Market Power

Although the second test for an exemption is stated in the alternative—either the transaction must be of limited scope or the Board must find that regulation is not needed to protect shippers from an abuse of market power—UP’s proposed construction satisfies both elements.

First, the proposed construction is limited in scope. The line to be constructed and operated is only approximately six miles in length. The agency has routinely granted construction exemptions for rail lines of similar length. See, e.g., Ken Tenn Regional Rail Partners, Inc.—Construction & Operation Exemption—In Fulton County, Ky. & Obion County, Tenn., FD 36328, at 1 (STB served Dec. 1, 2020) (conditionally exempting construction of 12.17 miles of rail line); Itasca County Regional Rail Authority—Pet. for Exemption—Construction of a Line of R.R. in Itasca County, MN, FD 34992, at 1 (STB served Sept. 8, 2008) (exempting construction of a 9-mile rail line); Southwest Gulf R.R.—Constr. & Operation Exemption—Medina County, TX, FD 34284, at 1 (STB served May 19, 2003) (conditionally exempting construction of approximately 7-mile line of railroad); Burlington N. & Santa Fe Ry.—Construction & Operation Exemption—Seadrift & Kamey, TX, FD 34003, at 1 (STB served June 19, 2001) (conditionally exempting construction of 7.5 miles of rail line).

Second, regulation is not needed to protect shippers from an abuse of market power. The proposed line will benefit CMC, which supports construction of the line.¹² The proposed line will provide an additional mode of freight transportation for CMC as well as future shippers. The proposed line will therefore enhance transportation services and competition. See Palmetto Railways, FD 36095, at 3 (finding that proposed rail line would enhance competition by providing rail service where it does not currently exist, thereby creating an alternative mode of transportation); Six County Assoc. of Governments, FD 34075, at 3 (finding that the proposed construction was not needed to protect shippers from an abuse of market power because the line would provide another transportation option and enhanced competition).

C. Expedited Consideration Requested

UP respectfully requests that the Board issue a decision granting the exemption expeditiously upon completion of the environmental review. As described above, UP has been collaborating with the City of Mesa and a number of other entities and public officials for several years on the PIRATE project, which is expected to provide far-reaching public benefits, described above. UP has diligently prepared the required documentation for the proposed line, obtaining a waiver of the six-month pre-filing notice and waiver of the EIS requirement. Given the limited scope of the transaction, the fact that the line is not expected to have a significant impact on the environment, and the benefits associated with the project, UP urges the Board to expeditiously complete its environmental review and grant the petition for exemption.

CONCLUSION

UP respectfully requests that this exemption petition be granted.

¹² Smith Statement at 1-2.

Respectfully submitted,

/s/ CRAIG RICHARDSON

CRAIG V. RICHARDSON
JAMES B. BOLES
TANYA L. SPRATT
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-7004

*Attorneys for Union Pacific
Railroad Company*

Dated: June 30, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

EXHIBIT A

CMC Statement

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

**STATEMENT OF Barbara R. Smith, Chairman of the Board, President and
Chief Executive Officer, Commercial Metals Company**

Commercial Metals Company (CMC) is a leading provider of construction reinforcement solutions, capable of meeting the most rigorous demands of the markets we serve. As the largest manufacturer of steel reinforcing bar (rebar) in North America and Central Europe, we are a key supplier to the construction markets across two continents. Our Tensar line of innovative subgrade soil stabilization and foundation enhancement solutions reaches customers around the globe and helps to lower the cost and duration of construction projects, while offering unique environmental benefits compared to traditional alternatives.

In addition to rebar, CMC also produces merchant bar, steel fence post and wire rod, making us a leader in the steel long products market. Our products go mostly unseen, but support virtually every element of modern life - from highways, bridges and airports, to sky-scrapers, sports stadiums and hospitals.

With a best-in-class safety record, technologies that reduce carbon emissions, and a commitment to helping the communities in which we operate, we are a responsible corporate citizen.

Union Pacific (UP) is a major logistics service provider to CMC in the markets they serve. Over the last 3 years, we have worked with UP and the local authorities in the development of this important rail solution that will serve our manufacturing facilities in Mesa, Arizona and the Pecos Advanced Manufacturing Zone in the East Valley of Phoenix. CMC is aware that UP is filing this Petition for a Construction and Operation Exemption under 49 U.S.C. § 10504 from the Requirements of 49 U.S.C. § 10901.

As one of the major industrial companies located along the future freight rail track line, we are in strong support of bringing rail freight infrastructure into the region. The addition of rail will allow us to expand operations, add high-paying manufacturing jobs and explore additional multi-

modal efficiencies that will benefit the region by reducing truck traffic and congestion while reducing greenhouse gas emissions.

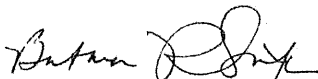
This rail project is critical to the success of our operations in Mesa, Arizona. We built our original steel micromill, capable of producing 275,000 tons per year of steel rebar, in 2009 and have expanded the capability of this facility to 420,000 tons per year over the past 13 years. This expansion has required that we increase our market reach and rail service is critical to providing our customers a low-cost logistics option. Additionally, after an extensive multi-state site search process, we chose Mesa, Arizona to locate a new steel micromill due to its central proximity to growing markets and the potential availability of lower-cost rail freight options that are provided by this project. We are currently constructing the first and one-of-a-kind, state of the art micromill capable of producing 500,000 tons of rebar and merchant bar products to replace rebar production from a facility that we closed in California and to expand our merchant bar production to western U.S. markets. We anticipate completion of this project and startup of manufacturing in mid-2023.

We currently receive and ship 48,000 truckloads per year via over the road freight and an estimated additional 52,000 truckloads per year after completion of our new facility in 2023. Rail will allow us to both receive raw material and deliver products to our customers more efficiently, eliminating an estimated 10,000 trucks per year from current operations and 25,000 trucks per year from our new manufacturing facility in 2023, further reducing traffic congestion and improving safety.

The existing steelmaking facility and the new mill both utilize leading edge micromill steelmaking technology. This technology, developed by CMC and the equipment manufacturer, emits 65% less GHG and uses 87% less energy to produce a ton of steel than the global steelmaking average. Additionally, the reduction of 35,000 over the road trucks per year will reduce GHG emissions further by using more efficient rail logistics for both incoming raw material and outbound finished goods. We estimate that this rail project will reduce GHG logistics emissions by another 20%.

In summary, this rail project is critical to our manufacturing facilities and to the East Valley's efforts in attracting advanced manufacturing to the region. CMC's existing facility will utilize this immediately at completion and significantly increase our usage upon commissioning of our new facility in 2023.

Barbara R. Smith

A handwritten signature in black ink, appearing to read 'Barbara R. Smith', with a stylized flourish at the end.

Chairman of the Board, President and Chief Executive Officer
Commercial Metals Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

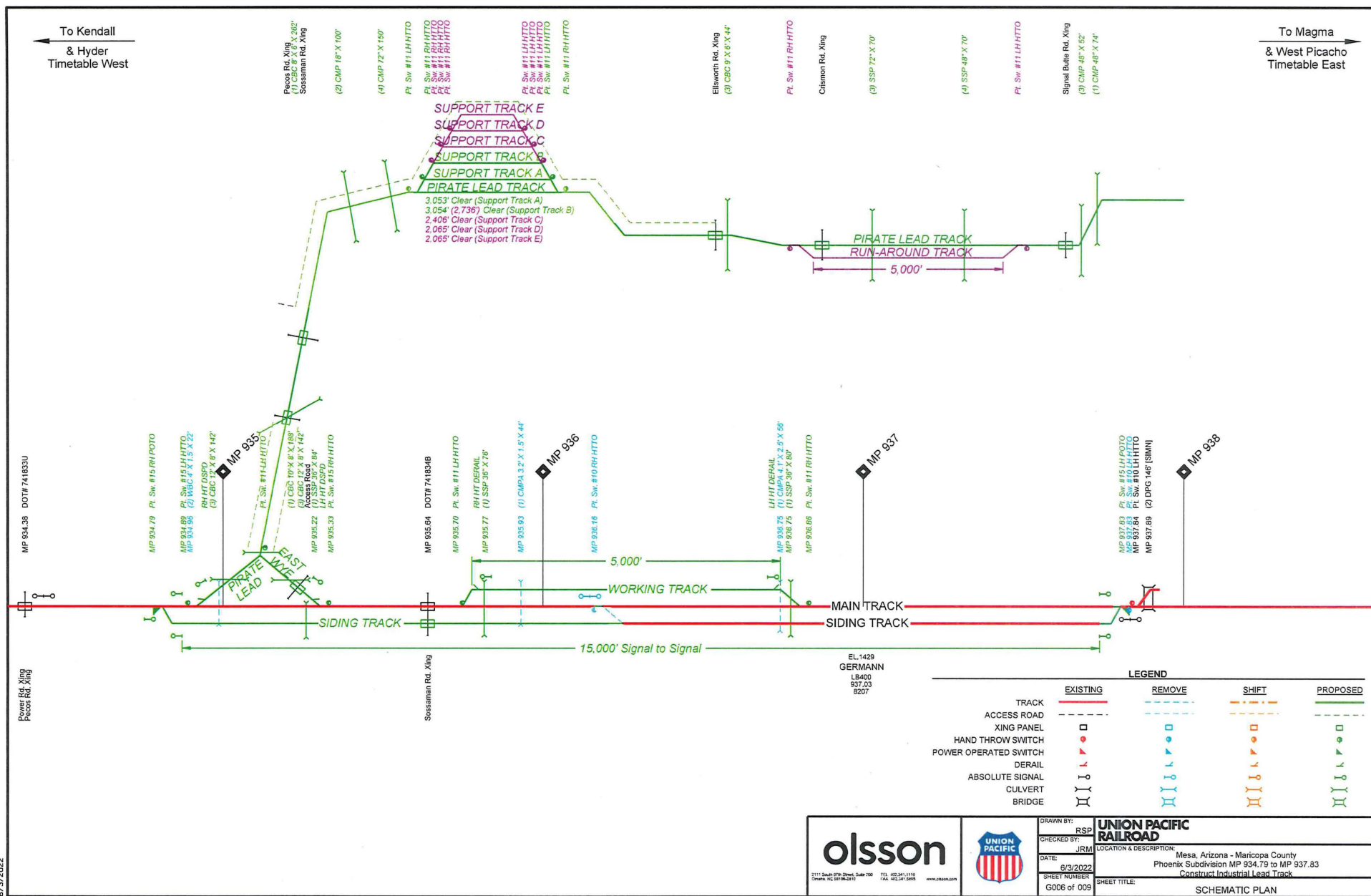
**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

EXHIBIT B

Map Condensed Plan

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

EXHIBIT C

OEA April 30, 2021 Waiver Approval



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

April 30, 2020

Mr. Jeremy Berman
Union Pacific Railroad Company
1400 Douglas Street
15th Floor
Omaha, NE 68197

Re: Docket No. FD 36501, Union Pacific Railroad Company – Construction and Operation Exemption – In Maricopa County, AZ; Waiver of Six-Month Prefiling Notice and Approval of Third-Party Contractor

Dear Mr. Berman:

Thank you for your letter dated April 1, 2021 requesting a waiver of the six-month prefiling notice and approval of a third-party contractor in the above-referenced proceeding. According to your letter, Union Pacific Railroad Company (UP) intends to file a petition with the Surface Transportation Board (Board) for an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate an approximately 6-mile rail line in Mesa, Arizona. As part of the Board's licensing process, the Board's Office of Environmental Analysis (OEA) will conduct an environmental review for the proposed rail line in compliance with the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act (NHPA) and the Board's environmental rules at 49 C.F.R. Part 1105.

Waiver from the Six-Month Notice Requirement

Pursuant to 49 C.F.R. § 1105.10(c), OEA is granting your request for waiver of the six-month prefiling notice generally required for rail line construction projects under 49 C.F.R. § 1105.10(a)(1). OEA met with UP representatives on February 19, 2021 regarding the proposed construction and operation of a new rail line in Maricopa County, Arizona. At the meeting, UP's representatives provided OEA with an overview of the project, and OEA discussed the Board's environmental review process.

OEA understands that UP proposes to construct and operate approximately 6 miles of

track in association with its Pecos Industrial Rail Access and Train Extension Project (the PIRATE project) in southeast Mesa, Arizona. The PIRATE project encompasses 4,800 acres of agricultural and industrial land primarily situated on the former Williams Air Force Base. The proposed rail line would connect the existing Pecos Advanced Manufacturing Zone (PAMZ) directly to the UP main line just west of the project area, running six miles through the PAMZ with a terminus at the border between Maricopa County and Pinal County. The proposed rail line would provide rail service to a currently non-rail served facility with future facilities planned for development along the line and would be operated by UP.

Because of what was discussed at the February 19, 2021 meeting, OEA believes that it has adequate information, and that UP is sufficiently aware of the environmental review process, to grant this request.

Third-Party Contractor Approval

Your request for approval under 49 C.F.R. 1105.10(d) and 40 C.F.R. 1506.5 for retention of Jacobs as an independent third-party contractor is also approved. Jacobs will prepare the appropriate environmental document on behalf of the Board in connection with the proposed rail line. Enclosed please find a disclosure statement that we ask you to forward to Jacobs to complete. Once the statement is signed by Jacobs, we request that Jacobs send it back to us. As we discussed in our meeting on February 19, 2021, OEA will directly supervise, review, and approve all environmental documents prepared by the independent third-party contractor.

If we can be of further assistance, please contact me or Adam Assenza of my staff at (202) 245-0301 or by email at adam.assenza@stb.gov.

Sincerely,



Danielle Gosselin
Acting Director
Office of Environmental Analysis

Enclosure

**SURFACE TRANSPORTATION BOARD
DISCLOSURE STATEMENT**

On behalf of _____, I certify that _____ has
(name of contractor) (name of contractor)

no financial or other interests in the outcome of the prospective petition of the

_____ to construct a rail line in _____.
(name of applicant/petitioner) (location of proposed rail line)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

EXHIBIT D

Approval Letter for Jacobs June 10, 2021



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

June 10, 2021

Jeremy M. Berman
Union Pacific Railroad Company
1400 Douglas Street, 15th Floor
Omaha, Nebraska 68179

Re: Docket No. FD 36501, Union Pacific Railroad Company – Construction and Operation Exemption – in Maricopa County, AZ – Request for Signature of Memorandum of Understanding

Dear Mr. Berman:

As you know, the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) has approved, under 49 C.F.R. § 1105.10(d), Jacobs as the independent third-party consultant for the above-referenced proceeding. Jacobs will assist OEA in preparing the appropriate environmental documentation in connection with Union Pacific Railroad Company's (UP) proposed construction of a rail line in Maricopa County, Arizona. OEA has received the signed disclosure statement from Jacobs. As previously discussed, OEA will direct, supervise, review, and approve all environmental materials prepared by the third-party consultant in this proceeding.

Attached please find a Memorandum of Understanding (MOU) which should be signed by UP, forwarded to Jacobs for signature, and returned to OEA. The purpose of the MOU is to outline each party's responsibilities and establish an understanding regarding the conditions and procedures each party must follow in preparing all environmental documentation.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact me at 202-245-0300 or Adam Assenza of my staff at 202-245-0301.

Sincerely,

Danielle Gosselin
Acting Director
Office of Environmental Analysis

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36501

**UNION PACIFIC RAILROAD COMPANY
--CONSTRUCTION AND OPERATION EXEMPTION--
IN MARICOPA COUNTY, AZ**

PETITION FOR EXEMPTION

EXHIBIT E

OEA Waiver for EA versus EIS



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

April 21, 2022

Tanya Spratt
Union Pacific Railroad Company
1400 Douglass Street, 15th Floor
Omaha, NE 68179

Re: Docket No. FD 36501, Union Pacific Railroad - Construction and
Operation Exemption - in Maricopa County, Arizona; Grant of EIS
Waiver Request

Dear Ms. Spratt:

Thank you for your March 24, 2022, letter regarding the Union Pacific Railroad Company's (UP) proposed construction and operation of the Pecos Industrial Rail Access and Train Extension Project (PIRATE) in Maricopa County, Arizona. The proposed rail line would extend approximately six miles from UP's main line, located just west of the project area through the Pecos Advanced Manufacturing Zone (PAMZ), ending with a connection to the Commercial Metals Company (CMC) steel mill and would be maintained and operated by UP. The purpose of the new line would be to provide rail service to the CMC steel mill and rail development opportunities to industrial-zoned land in and near the PAMZ.

In your letter, you provide information about the level of potential environmental impacts that may be associated with the proposed construction and operation and request a waiver of the preparation of an environmental impact statement (EIS). Pursuant to 49 C.F.R. § 1105.6(d), the Board's Office of Environmental Analysis (OEA) is granting your request for a waiver of 49 C.F.R. § 1105.6(a), which normally provides for the preparation of an EIS for rail line construction proposals.

Based on the information available to date, OEA believes that the potential environmental impacts of this project would not be significant, and any impacts could most likely be addressed through appropriate mitigation measures. Therefore, OEA has determined that the preparation of an environmental assessment (EA) is appropriate in this case for the following reasons:

1. Since initiating outreach with a wide variety of federal, state, and local agencies and organizations, to date, no group contacted has expressed opposition to the proposed rail line; even groups identifying potential concerns regarding traffic, noise, or other local

impacts still appear to support the PIRATE project and OEA's efforts to identify and mitigate such potential issues.

- During an OEA virtual meeting with local, regional, and state agencies on March 29, 2022, the Town of Queen Creek expressed concern about traffic and noise impacts but noted that it recognizes the importance of the proposed rail line for economic development in the area and therefore supports the project.
 - In a comment submitted to OEA on January 12, 2022, the City of Mesa indicated that UP must obtain right-of-way and building permits from the City of Mesa to construct the project and that acquisition of City-owned property would require approval from Mesa City Council but expressed overall support for the project.
 - Heritage Academy Gateway, a local school near the project area, initially expressed concerns about traffic impacts from at-grade train crossings in a comment submitted to OEA on January 3, 2022. However, after receiving further information, Heritage Academy Gateway expressed support for the project during an OEA-hosted meeting with local schools on March 28, 2022.
2. After consulting with multiple federal agencies with potential interests in the PIRATE project due to jurisdiction or special expertise, none found the PIRATE project to be of sufficient size, scope, complexity, or interest to warrant participating in the environmental review as a cooperating agency, opting instead to remain consulting parties.
- During an OEA-hosted interagency meeting on March 29, 2022, both the U.S. Environmental Protection Agency (USEPA) and U.S. Air Force (USAF) declined to participate as cooperating agencies for the environmental review of the PIRATE project. USEPA and USAF requested information coordination only.
 - On December 15, 2021, the Western Area Power Administration (WAPA) requested cooperating agency status if the project were to impact the Rogers to Coolidge 230-kV transmission line. The transmission line would be avoided. Therefore, WAPA is not participating as a cooperating agency.
 - No other federal agencies with jurisdiction or other interests in the project have been identified by OEA.
3. Based on OEA's consultation with various agencies, the potential rail line alternatives appear to be aligned with planned land use. OEA anticipates that any environmental issues identified through the EA process could be addressed by reasonable mitigation measures.
- No wildlife sanctuaries or refuges, national or state parks, or forests should be affected by the proposed PIRATE project.
 - On February 25, 2022, the U.S. Fish and Wildlife Service (USFWS) provided OEA with a list of threatened and endangered species that may occur in the project area or may be affected by the proposed project. No critical habitats are present. There is no

riparian habitat within or adjacent to the project area. In its transmittal email to OEA, USFWS highlighted information related to migratory birds and bald eagles and recommended coordination with the Arizona Game and Fish Department (AZGFD) regarding species of greatest conservation need, such as the western burrowing owl and the Sonoran desert tortoise. To the extent that any sensitive species would be adversely affected by the proposed project, appropriate mitigation measures would be developed in coordination with USFWS and AZGFD.

- OEA's cultural resource surveys will identify cultural and historic properties that are present within the project area. Tribes and agencies will be consulted throughout the Section 106 process to develop any appropriate mitigation measures for potential impacts to cultural resources.
4. The potential for significant negative regional or national impacts associated with the PIRATE project appears to be negligible.
- UP does not propose to add additional trains to its main line traffic. Railcars destined to or originating from the proposed PIRATE project would be delivered and collected by existing main line trains. Although these new operating procedures would result in a couple of longer trains per day on UP's main line, little to no impact on regional rail traffic is anticipated.
 - Providing rail service to the PAMZ would remove trucks from local and regional roadways which would have secondary benefits to air quality, traffic, noise, and climate change. No diversion of rail traffic to trucking is associated with the proposed PIRATE project.
 - The entire PAMZ is designated for industrial and commercial development, so providing rail service to this area would not be expected to result in significant adverse cumulative or indirect land use impacts.

After the Draft EA is prepared, OEA will make the document available for public review and comment. OEA will then prepare a Final EA that responds to the substantive comments received and includes any appropriate modifications to its existing analysis or additional analysis. The Final EA will also set forth OEA's final recommended mitigation measures to the Board. The Board will then consider the entire environmental record, including the Draft EA, public comments on the Draft EA, and the Final EA, when making its final decision in this proceeding. However, should the EA process disclose unanticipated impacts that are significant, OEA would require the preparation of an EIS at that time.

If we can be of further assistance, please do not hesitate to contact me or Adam Assenza at 202-245-0301.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Gosselin". The signature is fluid and cursive, with the first name "Danielle" written in a larger, more prominent script than the last name "Gosselin".

Danielle Gosselin
Director
Office of Environmental Analysis

cc: Kevin Rice