

From: [Gosselin, Danielle](#)
To: [Kevin P. Rice](#)
Cc: [Tanya Spratt](#); jboles@up.com; [Tabachnick, Alan](#); [Assenza, Adam](#); [Phoebus, Elizabeth \(Betsi\)](#)
Betsi.Phoebus@jacobs.com [Buckley, Maggie](#)
Subject: PIRATE
Date: Tuesday, August 1, 2023 5:04:33 PM
Attachments: [OEA Letter 8 1 2023.pdf](#)
[PIRATE disturbance in APE.kmz](#)

Hi Kevin,

Please see an important letter attached regarding the proposed PIRATE project. Let me know if you would like to discuss further.

Thanks,
Danielle

Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
(202) 245-0300



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

August 1, 2023

Kevin Rice
Sr. Manager M/W Environmental
Union Pacific Railroad
1400 Douglas Street, 9th Floor
Omaha, NE 68179

RE: Docket No. FD 36501, Union Pacific Railroad Company – Construction and Operation Exemption in Maricopa County, Arizona; Recently Discovered Ground Disturbance Within the APE

Dear Mr. Rice,

As you know, the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) is close to finishing its environmental and historic review of Union Pacific Railroad Company's (UP) proposed 6-mile rail construction in Mesa, Arizona (known as PIRATE). On Friday, July 28, 2023, OEA discovered land altering activities within the current Area of Potential Effects (APE) for the historic review of PIRATE under Section 106 of the National Historic Preservation Act, resulting in damage to sensitive archaeological sites that are eligible for listing in the National Register of Historic Places. Specifically, during analysis of current aerial photography of the project area, OEA noted that approximately six acres of land on UP property and within the APE had been graded and disturbed in the area of the proposed new wye connection to the UP mainline. Additional research revealed that this land is being prepared for a drainage basin tied to the Power Industrial development, which is currently under construction. OEA also identified three other possible locations within current UP property where the APE may have been disturbed. Enclosed is a map noting the locations of these disturbances.

These developments are very concerning and improper because the environmental and historic review for this project is still ongoing, and the Board has yet to issue a decision authorizing the proposed construction and operation of PIRATE. In addition, these land disturbances could end up significantly delaying completion of the historic review because a Memorandum of Agreement setting out agreed-to historic mitigation has not yet been executed. OEA plans to consult with the Section 106 consulting parties to appropriately address this issue.

Furthermore, OEA strongly recommends that UP implement the following measures immediately to protect the property within the APE from any additional disturbances while this matter remains pending:

- Contact Power Industrial and instruct them to stop all further activities on land owned by UP located in the area of the proposed WYE until this case is no longer pending before the Board;
- Secure UP's property within the APE and protect known archaeological sites;
- Place "Private Property/Do Not Enter" signs along UP-owned property within the APE; and
- Take appropriate steps to contact all adjacent property owners and instruct them not to undertake any construction or land disturbing activities within the APE while this case is pending before the Board.

As noted previously, OEA will be reaching out shortly to the Section 106 consulting parties to inform them of this situation and to consult with them about treatment options to address the newly discovered construction/disturbances and damage within the APE. The construction and clearing activities in the area of the proposed wye (and possibly three other locations) while the environmental and historic processes are ongoing is very unfortunate. OEA urges UP to address this situation immediately to ensure that any current construction activities cease and that additional damage does not occur while this case is pending before the Board.

If you have any questions, please feel free to contact me at 202-245-0300 or by email at danielle.gosselin@stb.gov or Alan Tabachnick, the Board's Federal Preservation Officer, at 202-934-8469 or by email at alan.tabachnick@stb.gov.

Sincerely,



Danielle Gosselin
Director
Office of Environmental Analysis

Enclosure: Map

Cc: James Boles, Vice President
Tanya Spratt, Senior General Attorney