

SERVICE DATE – JANUARY 24, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36501

UNION PACIFIC RAILROAD COMPANY—CONSTRUCTION AND OPERATION  
EXEMPTION—IN MARICOPA COUNTY, ARIZ.

Decided: January 24, 2024

Union Pacific Railroad Company (UP) has filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10901 with respect to the rail line construction project proposed in this docket. As discussed in the decision served on December 11, 2023, in connection with the preparation of a Final Environmental Assessment (Final EA) for the project, it was discovered that there had been significant ground disturbance and damage to National Register of Historic Places-eligible archaeological resources within the project’s Area of Potential Effects, including within the proposed right-of-way.<sup>1</sup> See generally Union Pac. R.R.—Constr. & Operation Exemption—in Maricopa Cnty., Ariz. (Dec. 2023 Decision), FD 36501 (STB served Dec. 11, 2023).

To obtain additional information about the damage, the surrounding circumstances, and whether UP has engaged in anticipatory demolition of historic properties in violation of Section 110(k) of the National Historic Preservation Act (NHPA), the Board took several actions, including directing UP to provide information and documents relating to specified topics by January 25, 2024. Dec. 2023 Decision, FD 36501, slip op. at 6. The Board also set a briefing schedule for submissions addressing whether UP has engaged in “anticipatory demolition” of historic properties in violation of Section 110(k) of the NHPA, and on whether the Board should take any further action. Under that schedule, opening submissions were due by March 11, 2024, and replies due by April 9, 2024. Id.

On January 22, 2024, UP filed a “Motion for Rolling Production of Additional Responsive Documents.” UP states that it will respond to the Board’s information requests and produce “a quantity of responsive documents” on January 25, 2024, but asserts that additional time is needed to complete its manual review of potentially responsive documents and produce all responsive documents in a format that is clearly indexed to facilitate the Board’s review. (Mot. 1-2.) UP asks that the procedural schedule be modified to allow UP to file an initial production on January 25, followed by a rolling production of additional documents ending on

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<sup>1</sup> The Board’s Office of Environmental Analysis (OEA) thereafter announced that issuance of the Final EA would be delayed until further notice. OEA Notice, FD 36501 (STB served Aug. 31, 2023).

February 15, 2024. (Id.) The motion does not mention or propose any changes to the other deadlines specified in the December 2023 Decision.

Under 49 C.F.R. § 1104.7(b), the Board has discretion to extend time periods specified in a procedural schedule for good cause shown. Based on the grounds set forth in the motion, UP's request for permission to make a rolling production of documents, beginning on January 25 and ending on February 15, is reasonable, and its request to modify the procedural schedule accordingly will be granted. In light of this extension, and to allow interested parties adequate time to prepare opening submissions following UP's production, the deadlines for filing opening and reply submissions will be extended for a corresponding 21-day period. Opening submissions will be due by April 1, 2024, and replies will be due by April 30, 2024.

It is ordered:

1. UP's motion for rolling production of additional responsive documents is granted as discussed above. The production must be completed by February 15, 2024.
2. The deadline for opening submissions is extended to April 1, 2024, and the deadline for replies is extended to April 30, 2024.
3. This decision is effective on its date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.