



GILA RIVER INDIAN COMMUNITY

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TRIBAL HISTORIC PRESERVATION OFFICE

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April 17, 2024

Danielle Gosselin, Director
Surface Transportation Board
Office of Environmental Analysis
RE: Docket No. FD 36501
395 E Street SW
Washington, DC 20423

RE: Docket No. FD 36501, Union Pacific Railroad Company, Construction and Operation Exemption, Mesa, Maricopa County, Arizona, Section 106 Consultation, Surface Transportation Board (Board) Decision March 26, 2024

Dear Director Gosselin,

The Gila River Indian Community Tribal Historic Preservation Office (GRIC-THPO) has received copies of the Surface Transportation Board Decision dated December 14, 2023, January 24, 2024 and March 26, 2024. The Union Pacific Railroad Company (UPRC) has filed a petition with the Surface Transportation Board (Board) requesting to construct and operate a 6-mile long rail line, the Pecos Industrial Rail Access and Train Extension (PIRATE), east and south of the Phoenix-Mesa Gateway Airport, Mesa, Maricopa County, Arizona.

During the preparation of a Final Environmental Assessment (Final EA), it was discovered that there had been significant ground disturbance and damage to National Register of Historic Places-eligible archaeological resources with the project's Area of Potential Effects (APE), including within the proposed right-of-way (ROW). Five (5) different locations of site damage have occurred at sites AZ U:10:2(ASM) and AZ U:10:152(ASM). We would like to emphasize the inexcusable damage, which has occurred to AZ U:10:2(ASM). At the direction of the Board's Office of Environmental Analysis (OEA), Jacobs Engineering Group Inc. (Jacobs) began archaeological assessment of the site damage beginning in August 2023.

Because of the reported site damage, the OEA has issued two (2) directives: 1) Ordered that all construction work for the PIRATE undertaking be halted; and 2) Has instructed the UPRC to provide and submit additional information that supplements UPRC's practices and procedures to comply with environmental and historic review requirements. The OEA advises (January 24, 2024) that the documents that the UPRC has provided are non-responsive to the document submittal directive and further orders may be necessary to obtain full compliance with requests for acceptable documentation. The UPRC document submissions were supposed to be submitted under oath with an affidavit affirming that a reasonable search to locate all responsive material had been completed. The OEA advises that the UPRC has not complied with their information request. Because of these objectionable circumstances, the Board has extended the comment period for these decisions to April 30, 2024. The OEA is seeking Tribal comment and insight

regarding the investigation of PIRATE archaeological site damage and the adverse effects upon the culture of the GRIC.

At the core of the OEA investigation is Section 110(k) of the National Historic Preservation Act (NHPA) entitled "Anticipatory demolition," which states that each federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant." [54 U.S.C. § 306113].

The following is adapted from our response submitted to the OEA on February 9, 2024. The *Akimel O'Odham* of the Gila River Indian Community affirm direct ancestry to the Huhugam (Hohokam) prehistoric tradition. We are deeply saddened to know that our religious and culturally significant *O'Odham* heritage has been desecrated and destroyed by modern human ground disturbing activities.

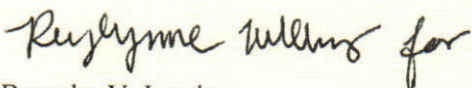
Destructive actions with heavy earth-moving machinery are unconscionable to the *O'Odham* spiritual connections with our Huhugam ancestors. We are dismayed that there are people who believe that destruction of this nature is considered a casual mishap and do not have any idea what spiritual harms have occurred due to the desecration of our Ancestor's eternal resting places. The *O'Odham* of Southern Arizona experience a significant emotional loss as our spiritual beings are cut and scraped away every time an Ancestral site is obliterated by unlawful actions by various entities. In this instance, the UPRC. *O'Odham* reverent associations with ancestral sites are reaffirmed daily through prayers, songs, and ceremonies that are essential and reaffirm our existence in this modern world.

Our reverent connections with our Ancestors are continuously being dismissed. Modern society views our beliefs as vanished, yet we continue our traditional religious practices that provide *O'Odham* with the strength to overcome the growing, accumulating sadness that remains within our hearts and minds. We would believe and trust that the OEA will determine that UPRC, with intent, violated Section 110(k) of the NHPA.

The GRIC-THPO expresses our thanks to the OEA for allowing us to comment on this investigation. The GRIC-THPO will continue to participate in the consultation process of this undertaking. The proposed project area is within the ancestral lands of the Four Southern Tribes (Gila River Indian Community; Salt River Pima-Maricopa Indian Community; Ak-Chin Indian Community and the Tohono O'Odham Nation).

Thank you for consulting with the GRIC-THPO about this undertaking. If you have any questions please do not hesitate to contact our office at 520-562-7162.

Respectfully,

A handwritten signature in black ink that reads "Barnaby V. Lewis for". The signature is written in a cursive, flowing style.

Barnaby V. Lewis
Tribal Historic Preservation Officer
Gila River Indian Community