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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36616

**SAVAGE TOOEELE RAILROAD COMPANY – CONSTRUCTION AND OPERATION
EXEMPTION – LINE OF RAILROAD IN TOOEELE COUNTY, UTAH**

REPLY TO PETITION FOR RECONSIDERATION

Savage Tooele Railroad Company (“STR”), the applicant in this proceeding, hereby submits this Reply to the Petition for Reconsideration (“Petition”) filed on April 22, 2024, on behalf of two individuals and two organizations, namely, Mr. Kyle Mathews, Mr. Sid Atkin, Erda Community Association (“ECA”), and Utah Physicians for a Healthy Environment (“UPHE”)(collectively, “Petitioners”). The Petition seeks reconsideration of the Surface Transportation Board’s (“Board”) decision served April 1, 2024 in this Docket approving STR’s proposed rail construction project subject to a number of conditions recommended by the Board’s Office of Environmental Analysis (“OEA”) to mitigate the potential environmental impacts of the project (“*April 1 Decision*”).

**I. PREFACE AND SUMMARY OF ARGUMENT PURSUANT TO
49 C.F.R. §1115.3(d)**

For the reasons set forth in more detail below, the Petition should be summarily rejected or denied. None of the Petitioners are parties of record in this proceeding, so none of them participated in the merits side of the Board’s deliberations that culminated in the *April 1*

Decision. Moreover, the Petition is singularly devoted to challenging various aspects of the Final Environmental Analysis (“Final EA”) prepared by OEA pursuant the National Environmental Policy Act (“NEPA”) and the Board’s regulations, but only two of the Petitioners can be considered to have participated in the process implemented by OEA that culminated in the Final EA. And one Petitioner – ECA – did not participate in this Docket in any respect, whatsoever. If the Petition is not rejected outright because none of the Petitioners are parties of record, three of the petitioners, Kyle Mathews, Sid Atkin, and ECA should nevertheless be precluded from asserting any of the claims in the Petition because they failed to do so previously despite given a full and fair opportunity by OEA.

Even if the Board considers the Petition properly before it, the Petition must be denied because it does not come close to meeting the standards for reconsideration of a final Board decision due to “material error” or “new evidence” under Section 1115.3. Rather, at its essence, the Petition simply rehashes – and in some cases repeats verbatim - the arguments UPHE made in the comments it submitted to OEA on the Draft EA, all of which OEA addressed in detail in the Final EA. The Petition therefore falls far short of meeting the strict standards for granting reconsideration of a final Board decision on the merits.

II. BACKGROUND

The individual Petitioners’ alleged connection to STR’s project and supposed standing to seek reconsideration of the *April 1 Decision* consists solely of comments some of them submitted to OEA complaining about the alleged environmental impacts of the project. As such, while the first paragraph of the Petition states it is seeking reconsideration of the Board’s *April 1 Decision* approving the project on its merits, the remainder of the Petition is devoted entirely to criticizing

the Final EA. However, as shown below, only UPHE submitted comments on the Draft EA. Each petitioner's interaction with OEA is discussed below:

1. Kyle Mathews – Mr. Mathews submitted a two-sentence email related to the project to OEA on December 14, 2021 (Attachment 1, page 1) in response to a Notice of Exemption initially filed by STR in Docket No. FD 36524. That Notice was filed on September 2, 2021, and later withdrawn by STR on May 26, 2022, for reasons described in its Petition for Exemption in this Docket, which was filed on June 9, 2022. In his December 14, 2021 email to OEA, Mr. Mathews merely advocated for an environmental study be performed for the project. He submitted another letter to OEA dated November 26, 2022 – after the Petition for Exemption was filed in this Docket but prior to issuance of the Draft EA on September 29, 2023 – expressing his general opposition to the project and who he perceived to be its backers. (Attachment 1, page 2). Mr. Mathews did not submit any comments to OEA on the Draft EA.

2. Sid Atkin - Mr. Atkin submitted a one paragraph email comment to OEA on October 24, 2023, complaining that the proposed tracks would be constructed too close to his home. (Attachment 1, page 3). This was after the Draft EA was published for public comment, but Mr. Adkin did not comment on any aspect of the Draft EA, its analysis, or its findings.

3. Erda Community Association – ECA did not participate in any manner in this Docket. Rather, its sole input on the proposed project was a letter submitted to OEA after the Notice of Exemption was filed in Docket No. FD 36524 (Attachment 1, pages 4-7). In its letter, ECA voiced its opinion that an environmental review pursuant to NEPA was required for the project, stating “[a]t a minimum an environmental assessment must be prepared, although we believe that given the scope and context of the impacts, that an Environmental Impact Statement is required.” *Id.* at 2-3. Although no doubt aware that OEA had prepared a Draft EA in this

Docket and had sought comments on it, ECA “did not submit an objection to the [Draft] EA.” Petition at 2.

4. Utah Physicians for a Healthy Environment – Contrary to the Petition’s statement that “UPHE has participated in this process and opposed this Decision throughout,” Petition at 2, the extent of UPHE’s participation has also only consisted of providing comments on the Draft EA, which it submitted on October 30, 2023 (“October 30 Comments”). STR responded to certain misstatements in the October 30 Comments concerning the scope of the proposed rail construction project. Specifically, STR refuted UPHE’s claims that the 11 miles of railroad tracks being constructed by STE are intended to serve parties and industrial projects beyond the Lakeview Business Park (“LBP”). OEA Document EI-33156, dated November 6, 2023.

III. ARGUMENT

A. The Petitioners Either Lack Standing to Seek Reconsideration or are Precluded from Raising the Arguments in the Petition

The Petition should be rejected because none of the petitioners are parties of record in this proceeding, which is contemplated by 49 C.F.R §1115.3. *See, e.g.* §1115.3(c)(when “a party seeks an opportunity to introduce evidence”)(emphasis added). Merely filing a comment with OEA does not make one a “party” to a formal STB proceeding. Such comments are collected by OEA and published in a separate “Environmental Comments” section of the Board’s website. Only parties who submit formal pleadings in the STB’s docket considering the merits of a particular application are designated as parties of record.

Even if the Board determines that a petition for reconsideration of a final decision on the merits of a rail construction project may be filed by entities who were not parties of record in the proceeding, it should still rule that ECA, Mr. Mathews, and Mr. Atkin are precluded from raising

any of the arguments set forth in the Petition. Each had a full and fair opportunity to review the Draft EA and submit comments and criticisms of it to OEA. None did so (while Mr. Atkin's email to OEA was technically submitted during the 30-day comment period for the Draft EA, it does not mention it, and merely complains that the proposed rail line would run too close to Mr. Atkin's home). These three entities cannot now be permitted to allege that the *April 1 Decision* should be reconsidered due to purported deficiencies in the Final EA that none of them raised during the Draft EA comment period. Docket No. FD 30186, *Tongue River Railroad Company, Inc. – Rail Construction and Operation – In Custer, Powder River and Rosebud Counties, Montana* (Served August 19, 2015) at 2; Docket No. AB 1065X, *Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and Vanderburgh Counties, Ind.* (Served September 23, 2011) at 4 (reconsideration denied because party failed to avail itself of “full and fair” opportunity via Board procedures); See, Docket Ex Parte No. 392 (Sub-No. 2), *Class Exemption for the Construction of Connecting Tracks Under 49 U.S.C. 10901* (Served August 15, 1997) at 1 (reopening denied in part because party had full and fair opportunity to participate but did not); STB Finance Docket No. 35081, *Canadian Pacific Railway Company, et al – Control – Dakota, Minnesota & Eastern Railroad Corp. et al* (Decision No. 9, served April 4, 2008) at 7 (failure timely raise concerns with environmental mitigation measures).

B. The Petition Does not Demonstrate Any Valid Grounds for Granting Reconsideration of the *April 1 Decision*

If the Board nevertheless determines that the Petition is properly before it as to one or more of the Petitioners, the Petition must still be summarily dismissed because it does not meet the standards for reconsideration set forth under §1115.3. Pursuant to that regulation, petitions for reconsideration “will be granted only upon a showing” of one or both of two points: “(1) [t]he prior action will be affected materially because of new evidence or changed circumstances

[and/or] (2) [t]he prior action involves material error.” The Petition alleges that there is “material error” and that there is allegedly “new evidence” the Board needs to consider. Neither are present.¹

1. There is No Material Error

The general “material error” alleged by the Petition is that the Board adopted the analysis and conclusions of OEA in the Draft EA and Final EA over the objections of primarily UPHE. The Petition merely repeats the previously expressed beliefs of UPHE in its comments on the Draft EA that OEA did not consider “all the pollution, public health, and climate consequences of the new railway stimulating industrial development on both upstream and downstream communities.” Petition at 2. As summarized by the Board, “NEPA requires that the Board examine the likely environmental effects of its action and inform the public concerning those effects.” STB Finance Docket No. 35087, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company* (Decision No. 19 served August 5, 2009)(“*EJ&E*”) at 4.²

In its review and approval of STR’s rail construction project, the Board fully complied with NEPA’s requirements by OEA preparing a detailed Draft EA that disclosed the environmental effects of the project and provided a full and fair opportunity to UPHE and other

¹ The last page of the Petition contains a request that the Board “issue a stay of the effective date of its Decision pending reconsideration.” Petition at 12. STR previously objected to this request as being untimely in a letter to the Board filed in this Docket on April 24, 2024. STR further notes here that the request is fatally deficient because the Petition makes no attempt to meet the four-pronged test required to obtain a stay of a Board’s decision pending reconsideration. See, e.g., Docket No. FD 36566, *MacQuarie Infrastructure Partners V GP, LLC – Acquisition of Control Exemption – Grenada Railroad, LLC, and Florida, Gulf & Atlantic Railroad, LLC* (served April 7, 2022) at 8.

² Citing 42 U.S.C. 4332; 40 CFR 1500.11(b); *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 97 (1983).

interested persons, entities, and agencies to voice their concerns about the project. UPHE took full advantage of that opportunity, and OEA painstakingly and thoroughly responded to each issue raised by UPHE. Final EA, Appendix I, Section 1.3. The Petition therefore does not raise any issues that have not been considered adequately by OEA in the Draft and Final EA. The mere fact that OEA and the Board disagreed with UPHE's views does not constitute material error. The Petition's specific allegations of material error are addressed below.

a. The Final EA Analyzed the Proper Scope of the Project

The Petition proceeds from the erroneous premise advanced in UPHE's October 30 Comments that the Final EA "fails to acknowledge" that the scope of the Project extends beyond the LBP to other speculative development projects and alleged "accelerated industrial development" around the Great Salt Lake that UPHE anticipates. Petition at 5. The Petition also again asserts – again erroneously – UPHE's belief that the "true purpose" of the rail line is to "incentivize development of over 35 million feet of industrial development" beyond just the 1700-acre LBP. *Id.* The Petition also attempts to fault OEA for not taking into account UPHE's previously stated belief that STR's 11-mile railroad serving LBP "would be a large contributor to a cascade of development consequences having far reaching, undesirable effects." *Id.*

UPHE's assertions about the alleged broader scope of the project and hidden "true purpose" were refuted by STR in its November 6, 2023 correspondence to OEA and have never been supported by UPHE by actual facts, because there are none. The actual scope and purpose of the proposed 11-mile line is to provide common carrier rail service to LBP. As the Final EA properly explained, "In making its final decision in this case, the Board will consider what is before it here; the transportation merits of the proposed rail line and the potential environmental impacts of that proposal." Final EA, Appendix I at page I-6.

The Final EA responded in detail to each of UPHE's claims about the development that could occur at LBP as a result of the introduction of rail service, in part by pointing out that the project was in fact consistent with applicable land use and zoning laws (1) "because the Lakeview Business Park (LBP) already exists and is consistent with the local zoning and land use plans," Final EA, Appendix 1 at 1-4, and (2) because "the Proposed Action would be located in and serve the LBP, which is an area zoned for general manufacturing that supports larger and more intensive industrial uses at least 20,000 square feet in size. The Proposed Action would be consistent with and help facilitate the distribution, manufacturing, and industrial uses planned for the LBP, which are encouraged by the zoning in that area." Final EA at 3-67. It was not error, let alone material error, for the Board to adopt OEA's decision to decline to consider the speculative impacts posited by UPHE.

b. OEA Fully Considered the Comments of the City of Erda and U.S. EPA

The Petition also appears to allege that the Board committed material error because OEA allegedly "ignore[d]," and "disregarded" input from the City of Erda, and "fail[ed to disclose]" the impacts of the rail line on "industrial activity at the LBP" as noted by the U.S. Environmental Protection Agency ("U.S. EPA"). The City of Erda was not a party of record in this proceeding; nor is it a Petitioner. But in any event, the notion that OEA ignored and disregarded the concerns of the City of Erda in the EA process regarding noise impacts and proximity is preposterous. OEA provided detailed responses to all the submissions of the City of Erda in the Final EA and explained OEA's rationale for not agreeing in all respects with the City's points. *See, e.g.*, Final EA, Appendix I at Section 1.3.2. More significantly, both STR and OEA *addressed* the City's concerns by STR volunteering to undertake, and the Final EA adopting, the following mitigation measures that directly involve STR consulting and/or working with the City on (1) road grading

and surfacing (VM-General-04); (2) creating a Quiet Zone and related added safety measures at the crossing of Highway 138 (VM-Noise-03); (3) special permits for night time construction to alleviate noise concerns (VM-Noise-5); (4) grade crossing design (VM-Grade Crossing 1); and (5) grade crossing construction process (VM-Grade Crossing 2).

As for U.S. EPA, the Petition states that it was material error for the Final EA fail “to disclose” the “indirect impacts of industrial activity at the LBP, and whether the development may subsequently impact groundwater.” Petition at 7. As an initial response, the quotation on page 7 of the Petition cited in support of this argument is not in the document cited by the Petition: Document EI-32659. Rather, STR located this passage in Document EI-33135, submitted by U.S. EPA on October 27, 2023. But in any event, OEA had a perfectly rational response for not “disclosing” such impacts. Responding directly to the quoted passage, OEA stated (Final EA, Appendix I, at 1-14)(emphasis added):

As stated in *Chapter 3, Section 3.13.2.1* of the EA, the ‘LBP master plan indicates that it would contain a mix of manufacturing, distribution, research, and development buildings.’ According to STR’s response to OEA’s Information Request #1, STR does not know at this time whether it would be asked to transport any hazardous materials. As a common carrier, STR would be obligated to transport hazardous materials upon reasonable request, per 49 U.S.C. § 11101(a). *Because there is no data on amounts and types of hazardous materials that could be transported, OEA cannot predict the likelihood of leaks, spills, or releases and thus any analysis of these issues would be speculative and would not inform the decision-making process.*

In short, there was no actual data on potential impacts from industrial activity, and therefore nothing on this subject to “disclose” to the public. But in any event, U.S. EPA was free to disagree with the Draft EA, but that does not mean OEA did not the requisite “hard look” at environmental impacts required by NEPA. *EJ&E* at 9. OEA committed no error, let alone a material error.

c. The Petition Alleges no Material Error Concerning Water Resource Impacts

The Petition contains a fairly lengthy discussion of the importance of ground water supplies and a restatement of UPHE's views in its October 30 Comments on the potential impacts of the project on various water sources and the Great Salt Lake. However, the Petition does not assert that either the Board or OEA committed any errors concerning the analysis of such impacts, let alone material errors.

d. The STB Committed No Material Error Concerning Wildlife Impacts

Similar to the discussion on alleged water resource impacts, the Petition's section on "Impact on Wildlife" consists almost entirely of a restatement of UPHE's comments on the Draft EA. Indeed, some passages are reproduced verbatim from UPHE's October 30 Comments. *Compare* Petition at 9 to UPHE's October 30 Comments at 12. To the extent the Petition even alleges that the Board committed an error, it is only vaguely that "the EA failed to examine what impacts might occur to the immediate adjacent landscape and the habitats for the species of greatest conservation need in and adjacent to the GSL." Petition at 9. This statement is absurd on its face, given the extensive consultation OEA conducted with other agencies and entities, its analysis of impacts on biological resources, and the opportunity it provided all interested parties to comment on OEA's analysis and conclusions.

e. There Was no Material Error Concerning Air Quality Impacts

The Petition's section on air quality is also mainly a restatement of UPHE's comments on the Draft EA, some of which are also reproduced verbatim. *Compare* Petition at 9-10 to UPHE's October 30 Comments at 9-10. As with UPHE's comments on the Draft EA, the Petition proceeds from the flawed premise that OEA was required to analyze impacts ranging far beyond

the actual, more narrow proposed project scope. Moreover, as with UPHE's other submissions, OEA accompanied its analysis and conclusions concerning impacts on air quality with a detailed response to all UPHE's comments on air quality. The Petition largely just reiterates UPHE's views on this subject and does not allege any specific errors that OEA or the Board might have made concerning this topic, let alone describe in detail any material error.

2. There is No "New Evidence"

Under §1115.3(c), when a party seeks reconsideration of a final Board decision based on an allegation of new evidence, it must demonstrate that "the prior action will be affected materially because of new evidence," §1115.3(c), and (1) "the evidence must be stated briefly and must not appear to be cumulative"; and (2) "an explanation must be given why it was not previously adduced." §1115.3(c). The Petition cannot meet these standards. First, nowhere does the Petition state, or attempt to argue, that even if the Board was to consider the "evidence" Petitioners claim is new, consideration of it would materially affect the Board's decision to approve the project and find it is in the public interest. This aspect of the Petition fails on that critical absence alone.

Moreover, the Petition vaguely alleges only that there is "new evidence" supporting its claims that the *Final EA* was deficient. Petition at 11. The Petition does not assert or argue that there is any "new evidence" that supports a claim that the *April 1 Decision*, as it pertained to the merits of the project, should be reconsidered pursuant to §1115.3. In any event, the so-called "new evidence" of The Tooele Valley Project Area Plan, *id*, is not new; it was specifically cited and discussed by UPHE in its comments on the Draft EA. October 30 Comments at 4. As stated above, both STR and OEA responded to this aspect of UPHE's comments. This "evidence" was therefore clearly "previously adduced" and considered by OEA. It is not "new."

Similarly, the Petition refers vaguely to “evidence of public outcry by Tooele Valley residents and the negative impacts on the City of Erda,” but the Petition does not specifically allege this “evidence” is new, and indeed this passage appears to simply refer to comments submitted to OEA by the City of Erda and others, which OEA considered and provided detailed responses to. Third, the assertion that a “recently published” newspaper article “discussing ozone levels worsening and getting reclassified” is also vague, but in any event would – at best - be merely cumulative of the substantial scientific data and information on ozone levels considered by OEA in the Draft and Final EAs, which §1115.3(c)(1) prohibits. Finally, the opaque reference in the Petition to alleged “discussion” of “the connection between the STR and . . . other entities,” Petition at 12, is incomprehensible and the Petition makes no attempt to state facts that would try to meet the standard of either (c)(1) or (c)(2) above, or that whatever new evidence is being referred to would materially affect the Board’s conclusions and analysis in the *April 1 Decision*.

IV. CONCLUSION

For all the reasons discussed hereinabove, the Petition should be rejected because the petitioners either lack standing to seek reconsideration under §1115.3 or are precluded from asserting the arguments set forth in the Petition. If the Board does not reject the Petition, it

should nevertheless be summarily denied because it identifies no material error or new evidence justifying reconsideration of the *April 1 Decision* for any reason.

Respectfully submitted,



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Attorney for Savage Tooele Railroad Company

May 10, 2024

ATTACHMENT 1

Kyle Mathews – Notice of Exemption proceeding 12/14/21

Please require that a environmental study be performed for the Savage Tooele Rail, Tooele County, UT. If allowed, this rail spur could be detrimental to the local environment and the many birds, etc. that rely on this local for habitat, shelter and food.

26 November 2022

Memorandum: Savage Tooele Railroad Company, Tooele County

Subject: Surface Transportation Board; Docket No. FD 36616

To Whom it may concern:

I am writing this letter in protest of the Savage Tooele Railroad Company, Tooele County, that The Romney Group has submitted for approval. I oppose and object to this project in the utmost way. The implications and cons by FAR out weigh the pros! In no way shape or form will this be of any advantage to the local communities. In fact, it will only create problems logistically, crossing several roads that are close to the end of the line on this project and you can be assured, no matter how much the Romney's say it will not be a problem, we can all be certain that there will be problems with trains stopped on major highways and blocking traffic for who knows how long.

It will be traversing through wet lands that are extremely precious to our community and environment in general. We cannot afford to lose any more of our precious wet land to frivolous development from developers that have no concern other than to line their pockets at the expense of the environment and the community.

There has NOT been one person that I have talked to in the community that thinks this is a good option or will be an advantage to the community. I am a life long resident of this valley and in fact a very close proximity to the proposed rail line and I see NOTHING good coming from a project like this.

We as a community have seen nothing but crooked, deceitful, ways and intentions from The Romney Group, we have ZERO interest giving up the things discussed by this letter and other letters I have read that have been submitted in opposition of this project, for The Romney Group to further line their pockets at the expense of the local community. The Romney Group are NOT the kind of people that we would choose to have in our community EVEN IF we approved of this project. They have skirted around laws and even gotten laws changed, literally for a 3-month period, so they could proceed with their crooked ways. I could go on with the unethical things they have done just to get to the point that they are at now, I cannot emphasize enough how much we DO NOT want the Romney's anywhere near this valley!! I know that that is not part of your decision making as the STB but it is an important factor for our community as citizens and we ask that you REJECT this project.

We really appreciate your attention to this matter and accepting comments. Again, we ask that you DENY The Romney Group approval of this project.

Sincerely

Kyle Mathews

Lifelong resident

Sid Adkins Comment 10/24/23

The proposed rail line is entirely too close to my home. Practically on the other side of my property line. This will negatively affect me and my neighbors in many ways. Why does this have to be built so close to private residences? There is going to be so much noise pollution from trains going by. Safety hazards of trains not being able to stop quickly being so near to houses. I also fear what might happen to the ground water that supplies my well, if an industrial chemical was to accidentally spill from a rail car. Surely there are regulations that new rail lines should be set back and not be built so close to private property. If you have to run a rail line, run it through the industrial area, not near neighborhoods.

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February 4, 2022

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E. Street, SW
Washington, D.C. 20423

**Re: Finance Docket 36524 and related FD 36525 - Savage Tooele Railroad Company –
Acquisition and Operation Exemption in Tooele County, Utah**

Dear Ms. Brown:

This letter is being sent with much concern regarding Finance Docket 36524, Savage Tooele Railroad Company (STR) – Acquisition and Operation Exemption in Tooele County, Utah. I represent the Erda Incorporation sponsors, the Erda Community Association, and the adversely affected land-owners in the immediate area where the abandoned railroad line is located. I am submitting to the U.S. Surface Transportation Board (“STB”) the following objections and comments regarding Savage Tooele Railroad Company Notices of Exemption filed with the Surface Transformation Board on December 20, 2021. The Notices of Exemption include:

- STR initially filed for various approvals from the Board on September 2, 2021 in Docket Nos. FD 36524 and FD 36525. On September 30, 2021, the Board placed these proceedings in abeyance and requested supplemental clarifying information for the Applicant by October 20, 2021. The Applicant filed its response on October 19, 2021
- STR then filed a corrected notice on November 12, 2021.

With the support of the STB via your exemption, STR intends to construct this railroad system to support the Romney Group’s proposed industrial park, known as the Lakeview Business Park. This railroad bed has not been used for at least 60 or 70 years. STR intends to enter into agreements with separate land owners to obtain property and construct an additional approximately 5 miles of interchange and switching trackage outside and to-be developed Lakeview Business Park at the south end of the Warner Spur near Grantsville, Utah. There is an old existing bed that would require

rehabilitation. Additionally, the proposed rail line passes through a subdivision, and working agricultural fields, much of which has been developed long after the railroad was abandoned and the track removed. Approximately half of this particular piece of the line will pass through wetlands used by migratory birds. There is no existing rail bed in this area, and the swamp/wetlands will require significant development to accommodate a rail line, including substantial ground disturbance to the protected wetlands area.

Of additional significance is that the rail line will pass over three well-traveled roads to include Sheep Lane (will become the Mid-Valley Highway), Erda Way, and State Road 138. The newly incorporated City of Erda will have to pay for intersection improvements and the fulfilling requirements to establish a quiet zone. The liability falls on the City for accidents at crossings. These significant risks and costs are not contemplated in the City of Erda's feasibility study, and could irreparably harm the city and its citizens.

Although the application states that the project would not impact any Clean Air Act non-attainment areas ("NAA"), the project does appear to be wholly within a current PM 2.5 NAA. Based on STB's categorical exclusion thresholds, any project with more than 3 trains per day in an NAA would require at least an EA.

The project also passes through a significant wetlands complex on the south shore of the Great Salt Lake ("GSL"). The wetlands associated with the GSL account for nearly 80% of the wetland acreage in Utah. The GSL is designated as a Hemispheric Site of Importance by the Western Hemisphere Shorebird Reserve Network, a designation that is shared by only seven such sites in the lower 48 states. The U.S. Fish and Wildlife Service describes the GSL ecosystem as a critically important and irreplaceable resource due to its location, size, and ecological features. In particular, the open waters, shorelines, and adjacent mix of wetlands and uplands provide a critical migratory bird staging area in an otherwise arid region. The maintenance of the GSL ecosystem, and its component areas and functions, is essential to the continued productivity and biodiversity of migratory birds and other wildlife species dependent upon the GSL ecosystem. Many wetlands along the GSL have already been extensively altered or lost due to development pressures. The wetlands associated with the GSL are perhaps the most ecologically important wetlands in the region. A map provided by the Utah Geospatial Resource Center indicates that the northern part of the rail line could be within the GSL floodplain.

STR states that their operations will involve no diversion of traffic to motor carriages. Moreover, they indicate that the transaction will not result in an increase in rail traffic of eight or more trains a day on any segment of line. Since the Lakeview Business Park is conceptual at this point, with only one structure being constructed, we do not understand how STR can determine what the demand for rail service will be. Additionally, the STR indicates that their operation will not affect a Class I or NAA under the Clean Air Act, that ozone depleting materials are not contemplated. The environmental impact on the existing wetlands is not addressed in their Notice of Exemption.

It appears that contrary to the assertions of STR, an environmental review must be prepared pursuant to the National Environmental Policy Act ("NEPA"). At a minimum an environmental assessment must be prepared, although we believe that given the scope and

context of the impacts, that an Environmental Impact Statement is required. Impacts include ecological, aesthetic, historic, cultural, economic, social, or health impacts, whether adverse or beneficial. 40 CFR 1508.1(g)(1). It is important to note that human beings are part of the environment (indeed, that is why Congress used the phrase “human environment” in NEPA), so when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS should discuss all of these effects. 40 CFR 1502.16(b).

In addition to the environmental impacts of the proposed action and alternatives, the environmental consequences section will discuss:

- Any potential unavoidable adverse environmental effects;
- The relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity;
- Any potential irreversible or irretrievable commitments of resources;
- Possible conflicts with land use plans, policies, and controls for the area;
- Energy and natural or depletable resource requirements and conservation potential of alternatives and mitigation measures;
- Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;
- Mitigation of adverse environmental impacts; and
- Applicable economic and technical considerations, including the economic benefits of the proposed action.

The EIS should also contain a summary of alternatives, information, and analysis submitted by commenters during the scoping process. 40 CFR 1502.17(a).

An environmental assessment is at least required given that the operational changes would exceed the thresholds set forth at 49 C.F.R. § 1105.7(e)(5). In particular, the proposal would lead to and increase rail traffic 100% since no rail line currently exists, and has not for 60 or 70 years. This includes impacts to:

- Existing wetlands and marshes that are home to many species of migratory birds: and
- Impact to existing properties that have been developed surrounding the rail bed that has not been used as indicated above. The relatively short rail line will cross over three existing roadways. This will create a significant concern in regard to traffic issues and potential accidents that become the responsibility of Erda City.

In conclusion, we appreciate the opportunity to register our objections and provide our comments. We urge the STB to provide additional time for interested parties to submit comments and urge close and careful scrutiny of the STR project. We also urge the STB to object to the Notices of Exemption.

Sincerely,

/s/

Janet M. Conway

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2024, I served a copy of the foregoing Reply to Petition for Reconsideration by electronic mail upon all parties of record on the official service list for Docket No. FD 36616.

/ss/ Thomas W. Wilcox
