

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36501

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

Digest:¹ This decision authorizes Union Pacific Railroad Company to construct and operate approximately six miles of new rail line in Maricopa County, Ariz., subject to environmental and historic preservation conditions.

Decided: March 12, 2026

On June 30, 2022, Union Pacific Railroad Company (UP) filed a petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate approximately six miles of rail line in connection with the Pecos Industrial Rail Access and Train Extension Project (the PIRATE project) in Maricopa County, Ariz. (the Line). The Line would connect the Pecos Advanced Manufacturing Zone (the PAMZ) to the UP main line west of the project area and provide rail service for Commercial Metals Company (CMC), as well as an alternative mode of freight transportation to future shippers. (Pet. 2.) By decision served on September 28, 2022, the Board instituted a proceeding under 49 U.S.C. 10502(b). No comments opposing the transportation merits of UP's petition were filed.

The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (Draft EA) on May 31, 2023, examining the potential environmental and historic impacts of UP's proposal and requesting public comments, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370m-11, and the National Historic Preservation Act (NHPA), 54 U.S.C. 300101-307108.

As discussed in more detail below, in August 2023, OEA delayed issuance of a Final Environmental Assessment (Final EA) after discovering that there had been significant ground disturbance and damage to National Register of Historic Places-eligible archaeological resources within the proposed right-of-way. Following briefing on the issue, the Board was unable to reach a majority decision on whether a violation of NHPA had occurred, and the historic review

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

process under NHPA resumed. On February 27, 2026, OEA issued a Final EA updating the environmental analysis and responding to the comments received on the Draft EA. In the Final EA, based on that analysis, OEA determined that the conclusions in the Draft EA remain valid. The Final EA also recommended conditions to the Board to avoid, minimize, or mitigate the project's potential impacts on the environment and historic properties.

After considering the entire record, including the record on the transportation merits, the Draft EA, the Final EA, and all comments received, the Board will grant UP's petition for exemption, subject to the environmental and historic preservation mitigation measures listed in the Appendix and set forth in the Final EA.

BACKGROUND

UP proposes to construct and operate the Line in connection with the PIRATE project, a public/private initiative to fund, engineer, design, and build a six-mile industrial rail branch, on land primarily situated on the former Williams Air Force Base. (Pet. 3.) The Line would connect the PAMZ to the UP main line (the Phoenix Subdivision) located west of the project area. (*Id.* at 2.) According to the petition, UP has collaborated with the City of Mesa, Ariz., for several years on the project, which UP states will “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.” (*Id.* at 3; *see also id.*, Ex. A (CMC Statement) at 2.) UP states that the project, which has support from several business organizations as well as public officials and governmental entities, is expected to drive economic growth and expand high-skill manufacturing jobs in Maricopa County. (*Id.* at 3-4; *see also id.*, Ex. A (CMC Statement) at 1-2.) According to UP, the Line will allow CMC, the largest manufacturer of steel rebar in North America and Central Europe as well as a leading producer in the steel long products market, to receive raw materials and ship products to customers by rail more efficiently from two facilities in Mesa, eliminating an estimated 35,000 trucks per year (10,000 from current operations, and 25,000 from a new manufacturing facility that was scheduled to open in mid-2023). (*Id.* at 4; *id.*, Ex. A (CMC Statement) at 1-2.) UP states that the addition of the Line will also provide an alternative mode of freight transportation for future customers that locate along the industrial lead. (*Id.* at 2, 5.)

On June 30, 2023, CMC filed a letter in support of UP's petition for exemption, stating that the project is critical to the success of CMC's operations in Mesa. (CMC Letter 1-2, June 30, 2023.) As noted above, no comments opposing the transportation merits of the proposed Line were filed.

As part of the environmental and historic review process,² OEA initiated a historic review under Section 106 of the NHPA. Section 106 requires federal agencies to take into account the effects of their actions on historic properties (those listed or eligible for listing in the National Register of Historic Places (National Register)). On April 6, 2022, OEA sent letters to a group of potential consulting parties³ inviting them to participate in Section 106 consultation and soliciting comments regarding the proposed Area of Potential Effects (APE) for cultural resources.⁴ (Draft EA 5-4; *id.*, App. K (Section 106 Consultation Documentation).) On September 1, 2022, UP was notified that a number of previously identified significant archaeological sites within the project's APE remained eligible for listing in the National Register, and that the proposed undertaking would have an adverse effect on historic resources. (See Jacobs Tech. Memorandum (Env't Comment EO-3827) at 3.)⁵

On May 31, 2023, OEA issued a Draft EA that examined the potential environmental and historic impacts of the project, recommended preliminary mitigation based on the results of that analysis and agency consultation, and requested public comments. The Draft EA explained that, if the Board were to authorize the PIRATE project, measures to mitigate the project's adverse effects on cultural resources would be included in the project's Memorandum of Agreement (MOA) and Historic Properties Treatment Plan (HPTP), which OEA was drafting at the time in consultation with the Arizona State Historic Preservation Officer (SHPO); Native American Tribes (Tribes); other federal, state, and local agencies; and UP. (Draft EA 3-88 to 3-89.) The Draft EA comment period closed on June 30, 2023.

² As noted in the petition, OEA granted a waiver of the requirement that an Environmental Impact Statement (EIS) be prepared. (Pet. 5. See also Draft EA 1-7 to 1-8 (describing process undertaken to determine that preparation of an EA, rather than an EIS, was appropriate).)

³ Consulting parties include the individuals and entities specified in 36 CFR 800.2(c)(1)-(4) and may also include other individuals and organizations with a demonstrated interest in the project "due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties." 36 CFR 800.2(c)(5).

⁴ The APE is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." 36 CFR 800.16(d). Historic properties can include prehistoric and historic archaeological sites, buildings, districts, objects, and structures, as well as traditional cultural properties and landscapes, and the term "historic property" includes properties of religious or cultural significance to Native American Tribes. (See Draft EA 3-7; Final EA 3-93.)

⁵ As permitted by the regulation at 49 CFR 1105.10(d), OEA used an independent third-party consultant, Jacobs Engineering Group Inc. (Jacobs), to assist OEA in conducting the environmental analysis for the PIRATE project.

On July 28, 2023, while preparing the Final EA, OEA discovered that there had been significant ground disturbance and damage to National Register-listed and eligible archaeological resources in the APE. (See Letter from D. Gosselin (Director, OEA) to K. Rice (Sr. Manager M/W Environmental, UP) at 1 (Aug. 1, 2023) (Env't Comment EO-3825) (noting that OEA made this discovery during analysis of current aerial photography of the project area).) OEA promptly directed UP to secure the right-of-way to prevent further damage, began gathering information, and engaged in outreach with stakeholders.⁶ On August 31, 2023, following meetings with several Tribes, OEA delayed issuance of the Final EA until further notice. Union Pac. R.R.—Constr. & Operation Exemption—in Maricopa Cnty., Ariz., FD 36501 (STB served Aug. 31, 2023).

Among the issues raised by the Tribes were concerns as to whether a violation of Section 110(k) of the NHPA had occurred.⁷ On December 11, 2023, the Board commenced consideration of the applicability of Section 110(k) and took steps to obtain additional information about the circumstances surrounding the damage. See Union Pac. R.R.—Constr. & Operation Exemption—in Maricopa Cnty., Ariz., FD 36501, slip op. at 4-6 (STB served Dec. 11, 2023). The Board directed UP to respond to several information requests and to produce documents. Id. at 5-6; id., App. 2. It also invited submissions from UP and interested parties on whether UP engaged in “anticipatory demolition” of historic properties in violation of Section 110(k). Id. at 6. OEA also conducted a thorough damage assessment, which was memorialized in a technical report finalized in January 2025. (Env't Comment EO-3990, Jan. 30, 2025 (Invasive Cultural Res. Damage Assessment Tech. Rep.).)

On June 3, 2025, the Board issued a decision stating that it was unable to reach a majority on whether UP had violated Section 110(k) and that, therefore, no determination that Section 110(k) is applicable would be issued, and the Board would continue with the NHPA Section 106 process and its consideration of the merits of the petition. Union Pac. R.R.—Constr. & Operation Exemption—in Maricopa Cnty., Ariz., FD 36501, slip op. at 5 (STB served June 3, 2025).

⁶ (See, e.g., Env't Comment EO-3866 (August 7, 2023 email from OEA to S. Anton, Salt River Pima-Maricopa Indian Community, re upcoming field meeting and information learned); Env't Comment EO-3829 (August 23, 2023 email from Jacobs/OEA to UP re action items from first weekly call); Env't Comment EO-3833 (September 13, 2023 OEA report to SHPO and Section 106 Consulting Parties); Env't Comment EO-3868 (October 13, 2023 letter from Jacobs to SHPO attaching minutes of October 4, 2023 meeting with consulting parties re site damage update).)

⁷ Section 110(k) provides that “[e]ach 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 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 the [Advisory Council on Historic Preservation], determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.”

2025). Following further consultations between and among the consulting parties, the MOA was executed on February 23, 2026, committing UP to comply with the terms and conditions pertaining to the protection of cultural resources within the APE, including the development of a HPTP. OEA issued the Final EA on February 27, 2026. The Final EA recommends conditions to the Board—including voluntary mitigation (VM) proposed by UP and mitigation measures (MMs) developed by OEA (each, an MM)—to avoid, minimize, or mitigate the potential environmental and historic impacts of the proposed construction and operation of the Line.

DISCUSSION

Rail Transportation Analysis. The construction and operation of new railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. 10901 or, as requested here, through an exemption under 49 U.S.C. 10502 from the formal application procedures of section 10901. “In either case, the [statute] expresses a clear presumption in favor of approving railways.” Seven Cnty. Infrastructure Coal. v. Eagle Cnty., 605 U.S. 168, 194 (2025) (Sotomayor, J., concurring); see also N. Plains Res. Council v. STB, 668 F.3d 1067, 1091-92 (9th Cir. 2011) (agreeing that there is a statutory “presumption for construction”); Mid States Coal. for Progress v. STB, 345 F.3d 520, 552 (8th Cir. 2003) (same). Section 10901(c) directs the Board to grant rail construction proposals unless it finds the proposal “inconsistent with the public convenience and necessity.” See Mid States, 345 F.3d at 552 (quoting 49 U.S.C. 10901(c)); Alaska R.R.—Constr. & Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), aff’d sub nom. Alaska Survival v. STB, 705 F.3d 1073 (9th Cir. 2013). Under section 10502(a), the Board must, to the maximum extent consistent with Title 49, subtitle IV, part A, exempt the proposed construction and operation of a rail line from the detailed application procedures of section 10901 when it finds that: (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power.

While UP’s posture and conduct during the course of this proceeding have raised serious concerns, the Board concludes that, based on the record, the proposed construction and operation of the Line qualify for an exemption under section 10502. The transportation merits of UP’s petition are unopposed. The record shows that there is currently no rail service to the PAMZ, and that CMC, a major industrial shipper in the area, must rely solely on trucks to support operations at its two Mesa-based facilities. (See Pet. 2, 5, 7, 9; id., Ex. A at 1-2.) The Line would enhance competition by providing CMC and other potential shippers in the area with a freight rail option that does not currently exist, advancing the goals specified by 49 U.S.C. 10101(4) & (5). Additionally, providing a rail-based alternative to trucking would encourage and promote energy conservation in furtherance of 49 U.S.C. 10101(14). The requested exemption would also eliminate the unnecessary expense associated with the preparation and filing of a formal construction application, expedite regulatory decisions, and reduce regulatory

barriers to entry for the Line, in furtherance of 49 U.S.C. 10101(2), (7) & (15). Other aspects of the rail transportation policy would not be adversely affected.

In addition, consideration of the proposed construction and operation of the Line under section 10901 is not necessary to protect shippers from an abuse of market power. As explained above, the Line would introduce a new freight transportation option for CMC and potential future shippers located in the PAMZ. CMC fully supports the project, and no comments opposing the project's transportation merits have been filed.⁸

Environmental Analysis. NEPA requires federal agencies to analyze the environmental effects of proposed federal actions and to inform the public concerning those effects. See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must examine environmental impacts prior to deciding whether to authorize the construction of a new rail line as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). Lone Star R.R.—Track Constr. & Operation Exemption—in Howard Cnty., Tex., FD 35874, slip op. at 4 (STB served Mar. 3, 2016). The Board has “substantial discretion” in assessing the facts relevant to its environmental review and the relevant impacts. Seven Cnty., 145 S. Ct. at 1512. It also has “broad latitude” to “draw a ‘manageable line’” regarding the scope of its inquiry. Id. at 1513 (citing Dep’t of Transp. v. Pub. Citizen, 541 U.S. 752, 767 (2004)). NEPA does not require that the Board evaluate potential environmental effects arising from “future or geographically separate projects,” “particularly” those over which the Board does not “exercise regulatory authority.” Seven Cnty., 145 S. Ct. at 1515-17; see also id. at 1515 (“Importantly, the textually mandated focus of NEPA is the ‘proposed action’—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration.”) (citing 42 U.S.C. 4332(2)(C)).

Moreover, while NEPA prescribes a process that must be followed, it does not mandate a particular result. See Seven Cnty., 145 S. Ct. at 1510 (citing Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)). Nor does NEPA otherwise impose any “*substantive* constraints on the agency’s ultimate decision to build, fund, or approve a proposed project.” Seven Cnty., 145 S. Ct. at 1511; see also Robertson, 490 U.S. at 350-51. Rather, in making such decisions, the Board may “weigh environmental consequences as [it] reasonably sees fit under its governing statute and any relevant substantive environmental laws,” and may conclude that “other values outweigh the environmental costs.” See Seven Cnty., 145 S. Ct. at 1507, 1510 (citing Robertson, 490 U.S. at 350).

There has been a thorough environmental review in this case. On May 31, 2023, OEA issued a Draft EA addressing in detail the potential environmental impacts of the proposed

⁸ Given the finding that regulation here is not needed to protect shippers from an abuse of market power, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a)(2).

construction and operation of the Line.⁹ The Draft EA analyzed a broad range of environmental issues, such as transportation and safety, air quality, noise and vibration, hazardous materials and waste sites, biological resources, water resources, geology and soils, land use and farmland, socioeconomics, visual quality, and cultural resources. The Draft EA concluded that UP's proposed action would have negligible, minor, and/or temporary impacts and that with the mitigation, no significant impacts would occur. (See generally Draft EA v-ix (tbl. S-1).) OEA recommended 74 mitigation measures to address project-related impacts in the areas of transportation and safety, air quality, noise and vibration, hazardous materials and waste sites, biological resources, water resources, geology and soils, land use and farmland, socioeconomics, cultural resources, and visual quality. (See Draft EA 4-2 to 4-13 (listing measures).) The Draft EA also explained that an EA is appropriate in this case and that an Environmental Impact Statement (EIS) is not required. (*Id.* at xii, 1-7 to 1-8, 3-108.)

OEA received 10 comments on the Draft EA.¹⁰ In the Final EA, served February 27, 2026, OEA updated its analysis and responded to the substantive comments received on the Draft EA.¹¹ (Final EA, App. M at M-1 to M-2, M-3 to M-14 (tbl. M-1, Draft EA Comments and Responses).) In response to comments, OEA recommended adding four new MMs; removing one MM because it is no longer applicable; and modifying 12 MMs to address changes to an existing condition or otherwise respond to a comment received. (Final EA 4-2 (listing the MMs).) Where appropriate, OEA also clarified and corrected information in the Draft EA.

⁹ Chapter 5 describes the agency, tribal, and public outreach conducted by OEA leading to the issuance of the Draft EA. (See Draft EA 5-1 to 5-7.) That outreach included meetings with the towns of Queen Creek, Ariz., and Mesa to discuss potential traffic impacts of the PIRATE project. During an April 2022 meeting, Queen Creek presented a summary of population growth and traffic concerns and requested that OEA's review include a traffic impact analysis to evaluate potential safety and traffic impacts and the need for grade separations where necessary. Based upon the results of OEA's preliminary analysis, OEA recommended several mitigation measures to address traffic impacts at crossings, (see Draft EA 4-3 to 4-4 (describing MM-TS-1 through MM-TS-4)), but determined that traffic impacts did not necessitate grade-separated crossings. (*Id.* at 3-64, 5-1 to 5-2, 5-3.) That analysis was recently updated with data from 2025, and as discussed below, the updated results do not affect OEA's determination that grade-separated crossings are not warranted.

¹⁰ Comment submissions were received from two individuals, five agencies (one of which filed two submissions), one business, and UP. (Final EA, App. M at M-1.)

¹¹ Because population growth and development in the region have increased since the Draft EA was issued in May 2023, OEA prepared an updated traffic analysis based on 2025 conditions (in lieu of the data and assumptions from 2022 used in the initial Traffic Report). (Final EA 3-2; see, e.g., updated Traffic Report (Final EA, App. B, 2-4 to 2-6, 3-1).) The updated Traffic Report includes a grade separation analysis for the railroad crossings of roads within the study area. (Final EA 3-2.) That analysis concludes that none of the proposed crossings meet the criteria for grade separation. (*Id.* at 3-15 and citations therein.)

(Final EA, App. M at M-1.) OEA reaffirmed its conclusion in the Draft EA that the potential environmental and historic impacts of the Line would be negligible, minor, and/or temporary and that with mitigation, no significant impacts would occur. (Final EA iii.) In the Final EA, OEA did not change any of its conclusions from the Draft EA. (*Id.* at ii.) OEA also recommended that the Board impose all of the mitigation in the Final EA on any decision authorizing the proposed rail line. (*Id.* at xi (citing Ch. 4, *Recommended Mitigation*)).¹²

The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with the proposed construction and operation of the Line and that the EA complied with NEPA. The Draft EA and Final EA adequately assess the environmental impacts of the proposed construction and operation and include appropriate recommended environmental mitigation to avoid or minimize potential environmental impacts.¹³ The Board finds that OEA properly determined that, with the recommended environmental mitigation measures, the proposed project will not have potentially significant environmental impacts, and that preparation of an EIS is unnecessary. Accordingly, the Board adopts the analysis and conclusions in the Final EA, including the recommendation to authorize Alternative 1 and the final recommended mitigation measures, which are set forth in the Appendix to this decision.

Historic Review Analysis. Section 106 of the NHPA requires federal agencies to “take into account the effect of” their licensing decisions (in this case, whether to grant UP’s request for an exemption, also called the “undertaking” under NHPA) on properties included in, or eligible for inclusion in, the National Register. If the undertaking would have an adverse effect on historic properties, the agency must continue to consult to avoid, minimize or mitigate the adverse effect. See 36 CFR 800.6(a).

¹² OEA evaluated two Action Alternatives for the proposed project: Alternative 1 and Alternative 2. Both alternatives include construction of a new wye (Y-like rail connection) at the Phoenix Subdivision and approximately 6.0 miles of rail line extending from the Phoenix Subdivision to industrial companies at the eastern end of the PAMZ. (Final EA iii; see id. at iv-ix (tbl. S-1).) OEA also evaluated the No-Action Alternative, under which UP would not construct and operate the rail line as proposed and rail service would not be available in the PAMZ. (*Id.* at iii.) Based on OEA’s analysis and consultation with appropriate agencies, Native American Tribes, and other stakeholders, OEA concluded in the Final EA, that, of the two Action Alternatives, Alternative 1 would result in fewer impacts on the environment and recommends that the Board authorize Alternative 1 if the project is authorized. (*Id.* at xi.)

¹³ The Board notes, in particular, that in the Final EA, OEA has recommended additional mitigation requiring UP to comply with commitments imposed during the Arizona Corporation Commission’s railroad crossing review process (MM-TS-6), (see Final EA 3-14), and has expanded its recommended timing limits for train operations over the Line to minimize the impact to roadways and to address local concerns regarding traffic impacts at grade crossings (MM-TS-1), (see id. at 4-4).

As detailed in the Final EA, OEA initiated the Section 106 process for the PIRATE project in April 2022, conducted cultural resources surveys from May through September 2022, assessed project effects in October and November 2022, and thereafter started the process to resolve adverse effects. (Final EA x, 5-4 to 5-7; *id.*, App. K2 (Sec. 106 Consultation Documentation).) During the Section 106 process, OEA consulted with 15 agencies and 10 federally recognized Native American Tribes (Section 106 consulting parties), four of which requested government-to-government consultation. (Final EA x.) OEA determined that construction of the Line would adversely affect four National Register-eligible and/or listed archaeological sites under Alternative 1, while Alternative 2 would affect three of those sites. (*Id.*) In consultation with the Section 106 consulting parties, OEA developed a Memorandum of Agreement (MOA) that identifies requirements and treatment measures that must be implemented to mitigate adverse effects. (*Id.*, citing Sec. 3.12, *Archaeological and Historic Resources*, and Sec. 5.1.2, *NHPA Section 106 Consultation*; see generally Final EA, App. K1 (MOA), Stipulations II, III, VI, VIII, IX, X, XI, XII, XIII, XIV, XIX, XX, XXI (describing UP-related requirements and responsibilities).) The execution of the MOA on February 23, 2026, completed the Section 106 review process and commits the signatories to meet their responsibilities under the MOA and the HPTP.

While this project satisfies the criteria for exemption, UP's failure to adequately protect the identified National Register-eligible archaeological sites in the APE from disturbance during the pendency of the proceeding was deeply troubling. UP represents that it has instituted several new practices to ensure that, going forward, cultural resources are not disturbed or damaged during the pendency of the NHPA Section 106 process for a construction project. (UP Submission 14-17, Dec. 16, 2024.) UP acknowledges that failures in communications and lack of awareness of the historic review process by various UP personnel are "unacceptable" and "in need of correction." (*Id.* at 5-6, 18, 24.) Should a future lapse in awareness or communications by UP personnel (or agents acting on UP's behalf in connection with a construction project) result in impermissible disturbance or damage to cultural property, the Board will closely scrutinize UP's conduct and consider whether significant consequences are appropriate. The Board expects UP to take all necessary steps to ensure that cultural resources are not disturbed or damaged during the Section 106 process in future construction cases.

CONCLUSION

Construction and operation of the Line will introduce a new freight transportation option in the PAMZ for both current and potential future shippers. It will also facilitate the diversion of traffic from truck to rail, thereby increasing overall energy efficiency. With OEA's final recommended mitigation, there will be no potential for significant environmental impacts from construction and operation of the Line. After carefully considering the transportation merits and environmental issues, the Board, considering the entire record, finds that the petition for exemption to allow UP's construction and operation of the approximately six-mile line of railroad in Maricopa County described as Alternative 1 in the Draft and Final EAs should be

granted, subject to compliance with the environmental and historic mitigation measures set forth in the Appendix to this decision.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts UP's construction and operation of the above-described rail line from the formal application procedures of 49 U.S.C. 10901.
2. The Board adopts the environmental and historic mitigation measures set forth in the Appendix to this decision and imposes them as conditions to the exemption granted herein.
3. Notice will be published in the Federal Register.
4. Petitions for reconsideration must be filed by April 2, 2026.
5. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

Appendix

Transportation and Safety

- VM-TS-1.** UP will follow all applicable federal Occupational Safety and Health Administration, Federal Railroad Administration, and operational safety regulations to minimize the potential for accidents and incidents during project-related construction and operation.
- VM-TS-2.** UP will consult with appropriate federal, state, and local transportation agencies to determine the final design of the at-grade crossing warning devices. Warning devices on public roadways will be subject to review and approval, depending on location, by the Arizona Corporation Commission, City of Mesa, and Town of Queen Creek. UP will follow standard safety designs for each at-grade crossing for proposed warning devices and signs. These designs will follow the Federal Highway Administration's *Manual on Uniform Traffic Control Devices for Streets and Highways* (2023) and the American Railway Engineering and Maintenance-of-Way Association's guidelines for railroad warning devices. UP will also comply with applicable Arizona Corporation Commission, City of Mesa, and Town of Queen Creek requirements.
- VM-TS-3.** Prior to construction of road crossings, when reasonably practical, UP and its contractor(s) will consult with local transportation officials regarding construction phasing and temporary traffic control. UP's contractor(s) will be responsible for local agency coordination of construction schedules, detours, and temporary traffic control, as well as obtainment of necessary temporary traffic control permits from the City of Mesa and Town of Queen Creek. As appropriate, UP's contractor(s) will maintain egress or traffic routing to allow for passage of emergency and other vehicles.
- VM-TS-4.** Prior to project-related construction, UP will consult with the Flood Control District of Maricopa County to determine the final details and reasonable signage for private at-grade crossings along access roads.
- VM-TS-5.** Prior to project-related construction, UP will consult with the Arizona Corporation Commission and City of Mesa regarding roadway safety and user expectations, which includes items such as pavement markings, signing, delineators, and active warning devices for vehicles, pedestrians, and bicyclists at proposed at-grade crossings.
- VM-TS-6.** Prior to and during project-related construction, in accordance with temporary traffic control permitting requirements, UP's contractor(s) will install temporary traffic control, including pavement markings, signing, and detours, throughout the project limits and applicable work zones.
- VM-TS-7.** Prior to and during construction and operation of the project, UP will work with the local agencies to facilitate the development of cooperative

agreements with other emergency service providers to share services areas and emergency call response.

- MM-TS-1.** UP shall conduct train operations on or over the PIRATE at-grade crossings outside the a.m. (6:00 a.m. to 9:00 a.m.) and p.m. (3:00 p.m. to 7:00 p.m.) peak periods to the maximum extent practicable.
- MM-TS-2.** Prior to increasing the frequency of trains on PIRATE beyond two per day (one in each direction) or routinely conducting train operations at at-grade crossings on or over PIRATE during peak periods (6:00 a.m. to 9:00 a.m. or 3:00 p.m. to 7:00 p.m.), UP shall consult with and comply with the reasonable requirements of the Arizona Corporation Commission.
- MM-TS-3.** UP shall not block at-grade crossings and adjacent signalized intersections on major arterials for more than 10 minutes at a time, when reasonably practicable, unless mechanical failure, an obstruction on the track, or a similar emergency condition prevents a train from being moved clear of the crossing. Major arterials include Pecos Road (south and north), Sossaman Road, Germann Road, Ellsworth Road, Crismon Road, and Signal Butte Road.
- MM-TS-4.** UP shall conduct the consultations required in mitigation measures VM-TS-3, VM-TS-4, and VM-TS-5 at least 30 days prior to intersection or roadway closures and comply with any reasonable requirements of those agencies, unless it is not reasonably practicable. Additionally, the requirements in mitigation measures VM-TS-3, VM-TS-4, and VM-TS-5, as needed, shall also apply to the Town of Gilbert.
- MM-TS-5.** If Alternative 2 is authorized by the Board, prior to project-related construction, UP shall coordinate with the City of Mesa regarding any impacts to Willis Road and the remaining part of the Willis Road project.
- MM-TS-6.** UP shall fulfill all commitments imposed during the Arizona Corporation Commission's railroad crossing review process, as recorded in Arizona Corporation Commission Docket No. RR-03639A-22-0287.
- MM-TS-7.** At least 30 days prior to any project-related construction on Sossaman Road, UP and UP's contractor shall notify the Mesa Gateway Airport Authority of the construction schedule and estimated timeline for completion. UP's contractor shall also notify Mesa Gateway Airport Authority when construction on Sossaman Road is complete.

Air Quality

- VM-AIR-1.** In accordance with Maricopa County dust control permitting requirements, UP's contractor(s) will implement appropriate dust control measures to reduce fugitive dust emissions created during project-related construction. UP will require its construction contractor(s) to regularly operate water trucks on haul roads to reduce dust generation.

- VM-AIR-2.** UP will work with its contractor(s) to make sure that construction equipment is properly maintained and that mufflers and other required pollution-control devices are in working condition in order to limit construction-related air pollutant emissions.

Noise and Vibration

- VM-NV-1.** UP will comply with Federal Railroad Administration regulations (49 C.F.R. Part 210) establishing decibel limits for train operation.
- VM-NV-2.** UP will work with its contractor(s) to make sure that project-related construction and maintenance vehicles are maintained in good working order with properly functioning mufflers to control noise.
- MM-NV-1.** During project-related construction, UP's daily construction schedule shall adhere to time restrictions that limit construction noise prior to 7:00 a.m. or after 5:00 p.m. to the maximum extent practicable, as set forth in Town of Gilbert Municipal Code Section 42-63, City of Mesa Municipal Code Section 6-12-6(G), and Town of Queen Creek Ordinance 282-04.
- MM-NV-2.** Prior to project-related construction outside of local time restrictions within Mesa city limits, UP shall consult with and comply with the reasonable requirements of the City of Mesa for a special use permit to allow nighttime construction.
- MM-NV-3.** During project-related construction, UP shall implement the following best management practices: (a) constructing temporary sound barriers around work along the Phoenix Subdivision, (b) routing construction-related truck traffic to minimize use of residential streets, (c) minimizing idling construction equipment and placing as far from receptors (e.g., homes, schools, and other publicly accessible areas that typically have low noise) as possible, (d) operating earthmoving equipment as far from receivers as possible, (e) minimizing simultaneous noise and vibration-generating activities, and (f) avoiding nighttime activities to the extent possible.

Hazardous Materials and Waste Sites

- VM-HAZ-1.** Prior to initiating any project-related construction, UP's contractor(s) will prepare a hazardous waste management plan detailing the manner in which hazardous wastes will be managed and describing the types and volumes of hazardous wastes anticipated to be managed. The hazardous waste management plan will address both onsite and offsite hazardous waste management and include the following: description of the methods to be used to ensure accurate piece counts or weights of shipments; waste minimization methods; facilities to be used for treatment, storage, and disposal; onsite areas designated where hazardous wastes are to be handled; identify whether transfer facilities are to be used, and if so, how the wastes will be tracked to ultimate disposal. Additionally, UP's contractor(s) will document hazardous waste inspections on a weekly basis.
- VM-HAZ-2.** In accordance with UP contractor's hazardous waste management plan and emergency management plan, and in the event of a spill over the applicable reportable quantity, UP's contractor(s) will comply with its spill prevention, control, and countermeasures plan and applicable federal, state, and local regulations pertaining to spill containment, appropriate clean-up, and notifications.
- VM-HAZ-3.** UP will require its construction contractor(s) to implement measures to protect workers' health and safety and the environment in the event that undocumented hazardous materials are encountered during construction. UP will document all activities associated with hazardous material spill sites and hazardous waste sites and will notify the appropriate state and local agencies according to applicable regulations. The goal of the measures is to ensure the proper handling and disposal of contaminated materials, including contaminated soil, groundwater, and stormwater, if such materials are encountered. UP will use disposal methods that comply with applicable solid and hazardous water regulations.
- VM-HAZ-4.** UP's contractor(s) will responsibly handle and store gasoline, diesel fuel, oil, lubricants, and other petroleum products to reduce the risk of spills contaminating soils or surface waters. If a petroleum spill occurs in the project limits as a result of project-related construction, operation, or maintenance and exceeds specific quantities or enters a waterbody, UP's contractor(s) will be responsible for promptly cleaning up the spill and notifying responsible agencies in accordance with federal and state regulations.

- VM-HAZ-5.** UP will prepare a hazardous materials emergency response to address potential derailments or spills. This plan will address the requirements of the Pipeline and Hazardous Materials Safety Administration and Federal Railroad Administration requirements for comprehensive oil spill response plans. UP will distribute the plan to federal, state, and local emergency response agencies. This plan shall include a roster of agencies and people to be contacted for specific types of emergencies during project-related construction, operation and maintenance activities, procedures to be followed by particular rail employees, emergency routes for vehicles, and the location of emergency equipment.
- VM-HAZ-6.** In the event of a reportable hazardous materials release, UP will notify appropriate federal and state environmental agencies as required under federal and state law.
- VM-HAZ-7.** UP will comply with applicable Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration, and Transportation Security Administration regulations for the safe and secure transportation of hazardous materials.
- MM-HAZ-1.** Prior to project-related construction, UP shall complete an ASTM International E1527-21 Phase I Environmental Site Assessment for any commercial real estate to be acquired with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601) and petroleum products.
- MM-HAZ-2.** During project-related construction, UP shall coordinate with Kinder Morgan to ensure that appropriate U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration guidelines (n.d.) and other applicable regulations (49 C.F.R. Parts 40 and 190–199; National Fire Protection Association 58 and 59) are followed regarding protecting closed and active pipelines in close proximity to the project limits.
- MM-HAZ-3.** During the final design phase of the project, UP shall coordinate with the owner/operator of any active exploration, monitoring, remediation, or production monitoring wells within the project limits to either protect the well, modify the top of casing to be above the new grade, or relocate the well outside of the project limits.

Biological Resources

- VM-BIO-1.** UP will comply with any conditions and mitigation commitments contained in this Environmental Assessment, recommended by the Arizona Game and Fish Department and/or the U.S. Fish and Wildlife Service, for sensitive species, including plants, that could potentially be impacted by the project.

- VM-BIO-2.** UP will require its contractor(s) to comply with the requirements of the Migratory Bird Treaty Act as applicable. The following measures will be taken by UP and/or its contractor(s):
- a. Where practical, any ground-disturbing, ground-clearing activities or vegetation treatments will be performed before migratory birds begin nesting or after all young have fledged.
 - b. If such activities must be scheduled to start during the migratory bird breeding season, UP will not take steps to prevent migratory birds from establishing nests in the potential impact area. UP or its agents will not haze or exclude nest access for migratory birds and other sensitive avian species.
 - c. If such activities must be scheduled during the migratory bird breeding season, a qualified biologist will perform a site-specific survey for nesting birds starting no more than 7 days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young will not be hazed, and nests with eggs or young will not be moved until the young are no longer dependent on the nest.
 - d. If nesting birds are found during the survey, UP will establish appropriate seasonal or spatial buffers around nests. Vegetation treatments or ground-disturbing activities within the buffer areas will be postponed, where feasible, until the birds have left the nest. A qualified biologist will confirm that all young have fledged.
- VM-BIO-3.** Within 30 days prior to project-related construction, qualified biologists will survey for the federal- and state-protected burrowing owl (*Athene cunicularia*) following guidelines provided by the Arizona Game and Fish Department (AGFD). Survey results will be provided to AGFD.
- VM-BIO-4.** If burrowing owls are observed at burrows in the project limits, a 100-foot buffer of no activity will be established around the burrow for the duration of the project.
- VM-BIO-5.** If an active burrowing owl burrow is in an area that requires impact, a local, qualified biologist will be contacted to remove the owls from the project limits with the appropriate state and federal permits. The burrows will be collapsed by the biologist to prevent further nesting activities.
- MM-BIO-1.** UP shall provide the results of the survey described in VM-BIO-3 to the Arizona Game and Fish Department (AGFD) within 30 days of survey completion, in accordance with the AGFD *Burrowing Owl Project Clearance Guidance for Landowners* (Arizona Burrowing Owl Working Group 2009).

- MM-BIO-2.** UP shall review updated U.S. Fish and Wildlife Service and Arizona Game and Fish Department species lists within 3 months of the start of project-related construction to see if any special status species were added after issuance of the Final EA. If new species are identified, UP shall notify OEA so that appropriate action can be taken if warranted.
- MM-BIO-3.** During implementation of mitigation measure VM-BIO-2, UP shall not remove any trees or large tree limbs or conduct vegetation removal activities, such as grubbing or shrub clearing, between February 1 and September 30 until a biologist has conducted a bird nest search of grasses, shrubs, trees, and tree limbs and has determined that no active bird nests are present. Vegetation may be mowed or removed if it has been surveyed within 7 calendar days prior to removal as long as only inactive bird nests, if any, are present. Between October 1 and January 31, grubbing, shrub clearing, and tree/limb removal activities are not subject to these restrictions.
- MM-BIO-4.** Prior to project-related construction, UP shall conduct a native plant inventory throughout the project limits to determine if protected native plants will be affected by project-related construction and consult with the Arizona Department of Agriculture (AZDA) to determine if a permit is required. If protected native plants will be affected and an AZDA native plant permit is required, UP shall comply with the reasonable requirements of AZDA prior to project-related construction.
- MM-BIO-5.** UP shall ensure that all disturbed soils are landscaped, seeded with a native seed mix, or otherwise permanently stabilized following project-related construction.
- MM-BIO-6.** Prior to any project-related construction, UP shall develop and implement a mitigation plan to address the spread and control of non-native invasive plants during the construction. This plan shall address the following: (a) planned seed mixes, (b) weed prevention and eradication procedures, (c) equipment cleaning protocols, (d) revegetation methods, and (e) protocols for monitoring revegetation. For any project-related construction on lands managed by the Arizona State Land Department (ASLD), UP shall seek input on the plan and approval from ASLD prior to construction.
- MM-BIO-7.** During any project-related construction, UP shall use only the minimum amount of light needed for safety. To the maximum extent possible and in accordance with Mesa Gateway Airport's lighting requirements, UP shall use narrow spectrum lighting. UP shall shield, tilt, or cut lighting to minimize the amount of upward shining light.

Water Resources

- VM-W-1.** UP's contractor(s) will submit a Notice of Intent to request permit coverage under Arizona Pollutant Discharge Elimination System Construction Activity

General Permit (CGP) AZG2020-001 CGP for construction stormwater management.

- VM-W-2.** UP's contractor(s) will submit an application for coverage under the National Pollutant Discharge Elimination System stormwater construction permits pursuant to Section 402 of the Clean Water Act for construction stormwater management.
- VM-W-3.** UP's contractor(s) will develop a stormwater pollution prevention plan, which will include construction best management practices to control erosion and reduce the amount of sediment and pollutants entering surface waters, groundwater, and waters of the United States. UP will require its construction contractor(s) to follow all water quality control conditions identified in all permits, including the Section 404 permit from the U.S. Army Corps of Engineers and the Section 401 Water Quality Certification from the Arizona Department of Environmental Quality.
- VM-W-4.** UP will obtain a permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act before initiating project-related construction in wetlands and other jurisdictional waters of the United States. UP will comply with all conditions of the Section 404 permit.
- VM-W-5.** UP will obtain a Section 401 Water Quality Certification from the Arizona Department of Environmental Quality. UP will incorporate the conditions of the Section 401 Water Quality Certification into its construction contract specifications and will monitor the project for compliance.
- VM-W-6.** UP will minimize impacts to wetlands to the extent practicable in the final design. After all practicable steps have been taken to minimize impacts to wetlands, UP agrees to prepare a mitigation plan for any remaining wetland impacts in consultation with the U.S. Army Corps of Engineers, where applicable.
- VM-W-7.** UP's contractor(s) will construct stream crossings during low-flow periods, when practical.
- VM-W-8.** When practical and in consultation with the Flood Control District of Maricopa County and the U.S. Army Corps of Engineers (Corps), UP's contractor(s) will minimize impacts to streams where impacts are unavoidable, where applicable. After all practicable steps have been taken to minimize impacts to streams, UP agrees to prepare a mitigation plan for any remaining stream impacts in consultation with the Corps, where applicable.
- VM-W-9.** For streams and rivers within a floodplain regulated by the Flood Control District of Maricopa County, UP will design the stream crossing with the goal of not impeding floodwaters and not raising water surface elevations to levels that would change the regulated floodplain boundary. If flood elevations change, UP will coordinate with the Federal Emergency Management Agency

and/or local floodplain managers to obtain a Letter of Map Revision where construction of bridges, culverts or embankments results in an unavoidable increase greater than 1 foot to the 100-year water surface elevations.

- MM-W-1.** Prior to project-related construction, to minimize impacts to waters of the United States, UP shall (a) mark the boundaries of the wetlands within Rittenhouse Channel to ensure avoidance during project-related construction, (b) mark the construction limits authorized in the Section 404 permit to ensure impacts within waters of the United States do not extend outside the permitted limits, (c) ensure that all vehicles and heavy equipment used during construction use spill containment equipment, (d) not stage or stockpile within waters of the United States, and (e) not dispose of any material within waters of the United States or place materials in a location where they may reenter waters of the United States through drainage or erosion.
- MM-W-2.** Prior to project-related construction, UP shall provide Flood Control District of Maricopa County an opportunity to review and comment on final design plans, including proposed culverts, associated end treatments, and other work in the Rittenhouse Channel.
- MM-W-3.** UP shall provide a new, permanent City of Mesa access point into the Ellsworth Channel to replace the access ramp that would be displaced by construction of the PIRATE channel crossing.
- MM-W-4.** If UP cannot use existing ramps for construction access to Rittenhouse Channel, UP shall construct temporary or permanent access points per Flood Control District of Maricopa County standards.
- MM-W-5.** During any project-related construction in a floodplain regulated by the Federal Emergency Management Agency, UP shall comply with the reasonable conditions in its August 2025 floodplain permit from the Flood Control District of Maricopa County.

Geology and Soils

- VM-GS-1.** UP's contractors(s) will limit ground disturbance to only the areas necessary for project-related construction.
- VM-GS-2.** During project-related earth-moving activities, UP's contractors(s) will remove topsoil and excess earthen material for safe and legal disposal to an offsite location.
- VM-GS-3.** UP's contractor(s) will stockpile excavated soil in areas away from environmentally or culturally sensitive areas and will use appropriate erosion control measures to prevent or contain erosion.
- VM-GS-4.** UP's contractors(s) will perform finish grading and surface disturbed areas with appropriate best management practices, where practical and in

consultation with the City of Mesa and Town of Queen Creek, when construction is completed.

- MM-GS-1.** UP shall comply with relevant Federal Railroad Administration inspection and maintenance requirements to identify and mitigate any threats to the safe operation of the project, including those resulting from corrosive soils, where present.

Land Use and Farmland

- VM-LU-1.** Prior to project-related construction, UP will secure agreements with utility owners to establish responsibility for protecting or relocating existing utilities, if impacted by construction.
- VM-LU-2.** Prior to project-related construction, UP will coordinate with Arizona State Land Department to develop irrigation infrastructure protection or relocation plans.
- MM-LU-1.** UP shall consult with the National Geodetic Survey at least 90 days prior to beginning project-related construction that would disturb or destroy geodetic marks E68, F517, DU2011, DU0687, and any other geodetic marks identified in or adjacent to the project limits.
- MM-LU-2.** UP shall coordinate with the Flood Control District of Maricopa County and the City of Mesa and comply with their respective reasonable requirements prior to beginning project-related construction within the Rittenhouse Channel or the Ellsworth Channel.
- MM-LU-3.** At least 45 days prior to project-related construction, UP shall coordinate with the Mesa Gateway Airport to address potential impacts to the preliminary road alignment between SkyBridge and Pecos Road (south); confirm the need for Form FAA 7460-1 (Notice of Proposed Construction or Alteration); and review compatibility with airspace, navigation facilities, height restrictions, and lighting requirements associated with the airport overflight areas.
- MM-LU-4.** Prior to beginning project-related construction, UP shall coordinate with utility providers to verify the adequacy of existing utility infrastructure to accommodate increased demand, ensure that industry standards are met, and minimize disruptions.
- MM-LU-5.** If Alternative 2 is authorized by the Board, UP shall coordinate with the owner of The Cubes at Mesa Gateway to resolve conflicts with ongoing or future development prior to project-related construction.

Socioeconomics

- VM-SOC-1.** UP will appoint a liaison to consult with communities, businesses, agencies, tribal governments, educational institutions, and nonprofit organizations to provide general project information, progress on construction, information on

rail operations and safety as needed and will seek to develop cooperative solutions to local concerns regarding project-related construction.

- VM-SOC-2.** UP and its contractor(s) will consult with appropriate adjacent landowners for coordination of construction schedules and temporary access during project-related construction.
- MM-SOC-1.** At least 2 weeks prior to each temporary road closure, UP shall alert the following of the road closure and the use of detours: (1) schools and emergency service providers within 3 miles of the detour and (2) landowners adjacent to any part of that proposed detour.
- MM-SOC-2.** At least 90 days prior to project-related construction, UP shall make the name and contact information for the community liaison identified in VM-SOC-1 available to the public. UP shall also promptly notify OEA once the community liaison is identified.

Visual Quality

- MM-VQ-1.** UP shall design and utilize lighting during project-related construction and operation in compliance with applicable regulations to preserve visibility around airports, including Federal Aviation Administration requirements at 14 C.F.R. Part 77 (Safe, efficient use, and preservation of the navigable airspace), Arizona Revised Statutes § 28-8462 (Airport hazard; public nuisance; prevention and elimination), and Arizona Revised Statutes § 49-1102 (Shielding of outdoor light fixtures; exemptions).
- MM-VQ-2.** UP shall ensure project lighting complies with the zoning provisions of Mesa's Airfield Overlay District, which prohibit land uses that "impair visibility in the vicinity" of Mesa Gateway Airport.
- MM-VQ-3.** Prior to project-related construction, UP shall provide Mesa Gateway Airport an opportunity to review and approve the final project lighting design plans.

Archaeological and Historic Resources

- VM-AHR-1.** UP and UP's contractor(s) will comply with the requirements of the Memorandum of Agreement and the historic properties treatment plan developed by OEA, Arizona State Historic Preservation Office, Native American tribal representatives, and other federal and state agencies in consultation with other consulting parties.