

August 17, 2026

The Honorable Sean McMaster
Federal Highway Administrator
Federal Highway Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator McMaster:

I write regarding the Interstate 11 (I-11) project in Arizona, which would develop a new transportation corridor to connect Nogales, AZ to Las Vegas, NV and beyond, connecting Phoenix and Las Vegas with an Interstate Highway for the first time.

As a part of studying the I-11 corridor in Arizona, the Arizona Department of Transportation (ADOT) and the Federal Highway Administration (FHWA) initiated a Tier 1 Environmental Impact Statement (EIS) in 2016. After six years of work and a cost of approximately \$20 million, FHWA and ADOT completed the Tier 1 process, culminating in the November 2021 Record of Decision covering the I-11 corridor from Nogales to Wickenburg. That decision established a broad corridor and framework but left project-specific details, including exact limits, alignment, environmental review, and engineering, for later Tier 2 EIS.

In order to advance the project, a Tier 2 EIS must be completed to determine the exact routing of I-11, and ADOT intends to conduct that analysis in smaller segments as funding is available. In 2022, the Arizona Legislature provided funding to initiate a Tier 2 EIS for the Buckeye-to-Wickenburg segment. That geography is currently the portion of I-11 for which Arizona has programmed funding for project-level environmental work.

As a result of the January 2025 court order in *Coalition for Sonoran Desert Protection v. Federal Highway Administration*, FHWA and ADOT agreed to not publish a Notice of Intent for a Tier 2 EIS while FHWA completes the required Tier 1 re-evaluation and related consultation. While I believe this re-evaluation is appropriate, especially around the proposed routing of the project in Pima County, neither the stipulation nor the court order explicitly address how FHWA and ADOT should approach preparatory work that may precede formal Tier 2 initiation, especially with regard to the northern portions of I-11, which have not been the principal focus of the Tier 1 litigation.

While it is important for the legal process to be completed and any deficiencies with the Tier 1 EIS rectified, it is also important for Arizona to understand what actions may lawfully occur as the litigation proceeds so that ADOT and FHWA initiate formal work on a Tier 2 EIS for the portions of I-11 north of Casa Grande as quickly as legally possible. Obtaining that clarity now would avoid unnecessary duplication and allow Arizona to preserve lawful project readiness

without prejudging the re-evaluation, the litigation, or any future project configuration. The northern geographies also warrant a defined federal answer because they connect major existing transportation systems, serve the State's identified freight network, and may have transportation utility independent of future construction south of Casa Grande.

To assist the state in this work, I request a detailed, coordinated written response within 60 days to the following questions to clarify what work may lawfully proceed on the northern portions of the I-11 corridor (commonly understood to be Wickenburg to Buckeye and Buckeye to Casa Grande), what prior work remains usable to ADOT and FHWA, and what upcoming decisions remain the responsibility of FHWA as the project owner and ADOT as the local sponsor. These questions are not intended to presume a legal outcome in the pending litigation, encourage a particular litigation position, or seek disclosure of privileged or protected legal information.

1. While the judicial stay remains in place, what work may proceed right now in the northern portions of the I-11 corridor to prepare for a Tier 2 EIS? In particular:

- a. How may state funds, federal planning funds, and federally authorized preliminary-engineering funds be utilized to define and prepare potential project-level actions for the northern segments of I-11? What limitations currently exist on the use of these funds for ADOT while the stay is in place?
- b. What work can ADOT take to develop a project definition for a northern segment of I-11, including developing possible termini, identifying a general location, defining a segment of independent utility or independent significance, identifying reasonable expenditures, and undertaking any other project definition work?
- c. What transportation and engineering foundation work can be currently undertaken by ADOT for a northern segment of I-11, including engineering and survey work, geotechnical, drainage, and hydrologic work, right-of-way and utility screening, and other related pre-engineering work?
- d. What pre-NEPA environmental work can be undertaken while the stay remains in place? Can the ADOT begin pre-NEPA coordination with federal, state, tribal, and local government entities? What work can be undertaken to identify roadway alternatives, no-build, or low-build options? And what work can ADOT undertake to pre-screen different termini, alignment, and interchange concepts for compliance with 4(f), ESA, biological-resource, Section 106, and related criteria?
- e. For work identified above that cannot currently proceed, please identify the first action that FHWA identifies as impermissible for each activity and identify whether such a restriction arises from the stay, NEPA procedure, agency policy, litigation prudence, issues related to project definition, funding restrictions, or another reason. Where the restriction is legal rather than prudential, please identify the controlling authority.

2. What components of the existing Tier I EIS remain usable for ADOT in preparing for a Tier 2 EIS and what parts must be revised or revisited? In particular:

- a. How can each of the following components of the Tier 1 EIS be utilized by the state moving forward, including an identification of instances where the answer varies between segments (Wickenburg to Buckeye, Buckeye to Casa Grande, and Casa Grande to Nogales)?
 - i. Corridor-level purpose and need;
 - ii. Transportation-system and freight context;
 - iii. Travel-demand modeling;
 - iv. Traffic and operational analysis;
 - v. Alternatives development and screening;
 - vi. Environmental inventories;
 - vii. Section 4(f), ESA, Section 106, and cultural-resource work;
 - viii. Public involvement;
 - ix. Agency and Tribal coordination;
 - x. Mitigation and implementation commitments; and
 - xi. The administrative record.
- b. Is there work that can proceed regardless of outcome of the pending litigation? Or work that must be updated or redone regardless of the outcome of the pending litigation?

3. While the stay prevents formal initiation of a Tier 2 environmental review, are there any limits on what project-definition, technical, environmental, and administrative package ADOT can prepare so that FHWA can evaluate a defined northern project? In particular:

- a. What are the exact details and documents that ADOT would need to submit to FHWA for a project-definition package to be considered complete? What has been submitted by ADOT to date for the funded Wickenburg to Buckeye segment?
- b. May ADOT submit, and may FHWA receive and act on, a formal project notification for a northern segment under 23 U.S.C. 139(e) and 23 C.F.R. 771.111(b)(2) while the stay remains in effect? Would submission, receipt, or FHWA's required response constitute prohibited initiation of a Tier 2 EA or EIS? If that process is unavailable, what alternative process is available for ADOT to obtain preliminary federal review before formal Tier 2 initiation?
- c. What is the minimum level of project definition and supporting analysis that FHWA would need before it could determine whether a northern project is sufficiently developed for agency legal review? Please indicate an answer for each of the following project definition components:
 - i. Proposed termini;
 - ii. Purpose and need;
 - iii. Independent utility or significance;

- iv. Reasonable expenditure, cost range, and funding strategy;
- v. Preservation of alternatives;
- vi. Conceptual design;
- vii. Transportation need;
- viii. Environmental screening;
- ix. Treatment of prior Tier 1 work; and
- x. Anticipated class of action.

- d. At what point would FHWA consider that record sufficiently developed to refer the matter to the Office of Chief Counsel and, if warranted, DOJ for evaluation of any potential court-related process?
- e. Please identify the transportation and operational evidence FHWA would require to determine whether the Casa Grande-to-Buckeye and Buckeye-to-Wickenburg geographies, separately or as a combined Casa Grande-to-Wickenburg project, have sufficient stand-alone transportation utility independent of future construction south of Casa Grande?

4. Given the legal, administrative, and procedural history of the northern portions (Wickenburg to Buckeye and Buckeye to Casa Grande) and southern portion (Casa Grande to Nogales), what are the procedural options available to ADOT to allow work to proceed on the two portions separately, consistent with the existing stay? In particular:

- a. Can you please provide a common definition and explain the legal and procedural differences between each of the options listed below?
 - i. Bifurcation of litigation or administrative proceeding
 - ii. Segmentation or definition of a project-level action under 23 C.F.R. § 771.111(f);
 - iii. Project phasing;
 - iv. Rescission or withdrawal of the Tier 1 ROD; and
 - v. Development of a separately defined project-level action within the existing Tier 1 framework.
- b. How would moving forward with each approach listed above affect the ongoing litigation, the timeline for the Tier 1 reevaluation, and the timeline for advancing a Tier 2 EIS (including pre-NOI efforts)? If the answer to these questions differs for a specific segment or geography of the I-11 route, please explain such differences and explain why.
- c. Of the approaches listed above, which would require rescission, withdrawal, supplementation, or modification of the Tier 1 EIS or ROD? And which may be evaluated while preserving the existing Record of Decision?
- d. What additional project definition documentation would be required before FHWA could determine whether any separately scoped action satisfies logical

termini, independent utility or significance, reasonable expenditure, preservation of alternatives, and other applicable requirements?

- e. For each of the questions above, when identifying obstacles for each approach, please differentiate between legal restrictions (and, if so, identify the controlling authority), agency policy, litigation-risk or litigation-prudence judgments, funding limitations, cost, timing, and sequencing. Where the answer depends on the project geography or on whether the existing Tier 1 ROD remains in place, please state that distinction expressly.

5. Should ADOT and FHWA determine that it is appropriate to approach the court to seek a modification to the stay related to a defined northern action, what are FHWA's prerequisites for referring the matter to the Department of Justice (DOJ) for review or concurrence? In particular:

- a. Please clarify what decisions can be made between ADOT and the Arizona Division Office, what decisions must be made by the FHWA Office of Chief Counsel, and what questions must be referred to DOJ.
- b. Does FHWA believe the issue-resolution procedures available under 23 U.S.C. § 139(h)(6), or another existing administrative process, may be used to resolve any questions concerning permissible pre-Tier-2 work, project definition, or federal decision responsibility?
- c. If DOJ concludes that court action may be appropriate, what are the available procedural mechanisms to modify or clarify the stay? And what factual, legal, and technical record would be required before any option could responsibly be considered? Again, this question is not intended to request an immediate court filing, direct DOJ's litigation position, or seek disclosure of privileged legal advice.

6. What is the full timeline between now and the earliest lawful initiation and completion of Tier 2 environmental review for the northern I-11 geographies, including Wickenburg-to-Buckeye and Buckeye-to-Casa Grande, separately where the schedules or prerequisites differ? In particular, please provide a single, coordinated schedule showing how ADOT could reach the earliest possible lawful start of a Tier 2 EIS. Please explain how the Tier 1/Section 4(f) re-evaluation, pre-NEPA work, litigation, project development, procurement, and formal Tier 2 processes interact, including key decision points, assumptions, contingencies, and dependencies. Please also indicate where work could occur concurrently, what work is dependency-based, who owns each major decision, and the earliest reasonable date for each decision.

7. If FHWA believes that current law provides no clear and workable path between a completed Tier 1 decision and a formal Tier 2 initiation, please identify the precise legal gap and provide technical assistance for a narrowly tailored legislative solution which could be included in surface transportation reauthorization legislation. Any

such proposal should preserve environmental, consultation, public-participation, interagency review, and judicial review requirements.

Providing clear written answers, coordinated across FHWA program offices and headquarters staff, and where appropriate, input from the Office of the Secretary of Transportation or other federal agency partners, will ensure that Arizona has a clear understanding of the options available to them regarding the Interstate 11 project. Furthermore, upon submission of this written response, I request that FHWA coordinate a principal-level meeting between FHWA and ADOT officials and my office to discuss the agency's written response to this request.

While it is critical that the judicial process be respected and all appropriate planning and environmental work be completed thoroughly and with robust public input, the opportunities presented by the Interstate 11 project from Casa Grande to the Hoover Dam are significant for the future of Arizona. Your assistance in providing a clear path forward will help the state take actionable steps to advance this critical project in as timely a manner as possible.

Thank you in advance, and I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Mark Kelly". The signature is fluid and cursive, with the first name "Mark" and last name "Kelly" clearly distinguishable.

Mark Kelly
United States Senator

cc: Sean Duffy, Secretary of Transportation
Elissa Nonove, Director of Field Services – West, FHWA
Anthony Sarhan, Arizona Division Administrator, FHWA
Jennifer Toth, Director, Arizona Department of Transportation