

Congress of the United States
Washington, DC 20515

December 13, 2019

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The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

The Honorable Patrick J. Fuchs
Vice Chairman
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

The Honorable Martin J. Oberman
Board Member
Surface Transportation Board
395 E Street Southwest
Washington, D.C. 20423

Dear Chairman Begeman, Vice Chairman Fuchs, and Board Member Oberman:

We write to request the Surface Transportation Board (STB) grant a recently filed petition to open a proceeding to clarify the interplay between the Interstate Commerce Commission Termination Act of 1995 (ICCTA) and the Clean Water Act (CWA). The STB plays a vital role in ensuring the safe and stable railway operations across the country. Without ICCTA preemption, railways could be forced to maneuver a patchwork of state and federal laws, some of which can be used to unfairly target specific products.

As you know, a 2016 federal court ruling left open the question if the ICCTA preempts application of the Clean Water Act to railcars in transportation. While the Environmental Protection Agency (EPA) has not historically required rail cars in transit to hold a CWA permit, we are concerned that without an STB declaration, rail cars loaded, in this case with coal, could be arbitrarily prohibited from transporting certain commodities, or required to obtain a potentially prohibitive CWA permit.

Such a permitting requirement could allow EPA and any State and Local governmental entity with independent permitting authority to establish permit conditions that result in direct regulation of rail transportation and subject the interstate freight rail system to a patchwork of local requirements. We believe this is in direct conflict with the ICCTA - which makes clear that rail transportation is subject to the exclusive jurisdiction of the STB.

The STB has the power to issue declaratory orders, and in this instance, such an order would provide much needed certainty. We urge you to open a proceeding and fully and consider this important matter. Thank you for your consideration of our request, and we look forward to working with you on this important issue.

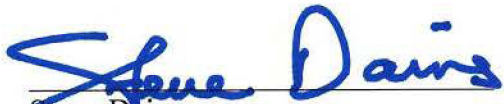
Sincerely,



John Hoeven
United States Senator



Kevin Cramer
United States Senator



Steve Daines
United States Senator



Kelly Armstrong
Member of Congress



Greg Gianforte
Member of Congress