

January 26, 2021

EI-30394

Surface Transportation Board  
Office of Environmental Analysis

### **Comments of Joel Ban on the Uinta Basin Railway**

Dear STB:

The comments below highlight our opposition to the proposed railway expansion in the Uinta Basin. We request that a no action alternative be analyzed and followed.

#### **Forest Plan Amendment**

We understand a Forest Plan Amendment may be required for the Indian Wells alternative. If such an amendment were formally proposed a separate NEPA process would be required under federal regulations. Such an amendment must be based on the best available science, effects analysis, and monitoring data. The construction of the proposed rail line in roadless areas within the Ashley National Forest is problematic as none of the exceptions for such construction exist under part 294 of the CFR such as: when a road needed to protect public health such as for a natural disaster or a catastrophic event, response under the CERCLA ("superfund"), or road realignment to prevent irreparable resource damage. In addition, to the apparent prohibition on such construction within a roadless area, as a matter of policy there is almost no justification to irreparably alter the natural roadless conditions that currently exist. The proposed construction that would carry hydrocarbons and other toxic materials within a relatively undisturbed natural roadless area is an inappropriate appropriation of federal resources and contrary to the public interest. The two alternatives that contemplate this route should be disregarded on this basis alone.

#### **Biological Resources**

The alternative would also have apparent effects on Sage Grouse, a threatened but not endangered species. Sage Grouse habitat has experienced tremendous reduction from its historic range somewhere around 56% loss of historic range. All action alternatives would pass through or near known leks. Although USFWS found that the species warranted an endangered listing in 2010 it was found to not warrant listing in 2015 due to voluntary conservatory measures by the states. Unfortunately, these state measures are voluntary and because they do not bind any particular parties, they are not particularly effective in terms of protection of the species. There are currently no binding measures to protect their habitat, and in 2019, millions of acres of sagebrush focal areas were eliminated from protection. The development of oil and gas is particularly detrimental to their success since loss of habitat reduces their chance of survival.

The multitude of impacts from the construction and operation of this train line would be devastating to a multitude of species—including endangered species. This is the conclusion within the Draft Biological Assessment. Several of the endangered plant and animal species discussed within the BA and EIS include the Colorado pikeminnow, humpback chub, bonytail, and also include other species that are not endangered. These species that are likely to be “adversely affected” would be subject to a Biological Opinion under the ESA. The BO would ensure that the proposed action will not reduce the likelihood of survival of the endangered species, include recommendations that will help recover the species, including “reasonable and prudent” measures to minimize harmful effects such as monitoring and reporting. This however is insufficient as the project’s action alternatives would definitively reduce the chances of success for several endangered species as is conceded in the Biological Assessment.

## **Water Impacts**

In terms of water impacts where in the EIS is it described how and on what basis surface water impacts will be temporary? How can these alleged temporary impacts be assured through mitigation measures? Please describe these measures in detail and how the temporary nature of these impacts can be proven. The preferred alternative of Indian Canyon presents an unacceptable level of surface water impacts for perennial streams. These proposed impacts are unacceptable based on limitations that are required under the Clean Water Act.

Frequently the DEIS describes impacts as “unknown” such as the exact locations of construction activities and the precise extent of a disturbed area are unknown. DEIS 3.3-1. The final analysis will only come if one of the action alternatives is chosen. *Id.* The point of NEPA however is to study the impacts of any proposed alternative before a selected alternative is chosen. As the Supreme Court has held, an EIS must take a “hard look” at the environmental consequences of a proposed action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976). By deferring the analysis part of the process until after an alternative is chosen entirely defeats the purpose of NEPA. Selection of an alternative is only proper if each alternative is rigorously studied so the public, stakeholders, and decision makers can make an informed decision based on good data and thorough analysis of each alternative’s impacts on the environment. This cannot be done if the analysis occurs after selection of an action alternative. Please include complete and thorough analysis that NEPA requires before an action alternative is selected.

The planning and study of the alternatives is incomplete, inconclusive and very preliminary and therefore gives the public and stake holders an insufficient understanding of the alternatives. For instance, siting of the communication towers or access roads is currently unknown. Again, this deferral of decision making to a later period of time is improper as it doesn’t provide sufficient understanding of each action alternative and how it will impact the quality of the environment as is required under NEPA. The DEIS concedes that “it is not possible to determine the extent of, not to quantify, the actual impact on these adjacent wetlands because there is no way to predict how a wetland adjacent to the project footprint would react to construction”. DEIS p. 3.3-9. There is no indication as to why this is the case as the DEIS doesn’t say whether there is any published literature that has studied this issue, modeling, or

other experiences where wetlands were impacted by development such as train line construction. This assertion is hard to take at face value as in fact there are published studies on how wetlands are impacted by development.<sup>1</sup>

The DEIS also concedes that although many portions of the streams are in good condition, but some segments are heavily disturbed by oil and gas development. DEIS, 3.3-12. Please specify the exact streams and sections that are in this condition and how these areas would be impacted by the proposed project and other cumulative impacts such as oil/gas and/or livestock.

The DEIS indicates that degradation of water quality would be temporary, and only to occur during construction. DEIS 3.3-26. Even if this were true, which is never explained, the DEIS also concedes that impaired waters under section 303(d) exist within the project area. The coalition also proposes obtaining a 401 water quality certification and a NPDES permit before construction begins. This would involve development of a stormwater pollution prevention plan so as to avoid/minimize erosion/sedimentation from petrochemical spills that would cause water quality impacts. The DEIS acknowledges that sediment transport, deposition, modification of channel configuration could occur as well as release of pollutants into these waters. Before any construction began however the agency must ensure that the permit effluent limits are consistent with the requirements of the TMDL. 40 C.F.R. 122.44(d)(1)(vii)(B). If the TMDL is more than five years old a site-specific analysis should be conducted before a discharge permit is issued.

If a new discharge is allowed into an impaired water the TMDL must make an allowance for it through a WLA. 40 C.F.R. 122.4(i)(1). Where there is a new discharge into an impaired water that does not have an established TMDL the discharge must ensure compliance with the WQS. 33 U.S.C. 1311(b)(1)(C). Courts have held that a new permit may not be issued to an impaired water body where the requirements of 40 C.F.R. 122.4 were not met first. *Friends of Pinto Creek v. EPA*, 504 F. 3d. 1007, 1012-13 (9<sup>th</sup> Cir. 2007). There would have to be sufficient load capacity for the pollutant and/or a compliance schedule. There is some indication as to which water bodies would be potentially subject to increased pollution from the proposed project, however whether it would be in compliance with the Clean Water Act based on the already impaired water status of a number of water bodies is unclear. Efforts to minimize (or to only create “short term impacts”) impacts to these water bodies as explained above is insufficient, and in this case a permit may not be issued if the requirements of 40 C.F.R. 122.4 are not first met.

The idea that ongoing impacts to surface waters could be avoided since the impacts would mostly be temporary is unexplained in the DEIS. This is due to stormwater runoff from the

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<sup>1</sup> *Railroad impacts on wetland habitat: GIS and modeling approach*; 10.5198/jtlu.v0i0.181; Journal of Transport and Land Use

railbed and road surfaces would result in sediments to surface waters. DEIS, p. 3.3-28. The study also indicates that fugitive dust and maintenance related pollution would be created and be deposited into these waters. Other toxic chemicals and PAHs could drip directly into surface waters.

In terms of wetlands the DEIS appears to understate impacts as it concludes that there would be no construction in wetlands or portions of wetlands adjacent to the project, and that there could be indirect impacts. DEIS 3.3-9. This portion of the DEIS is missing significant analysis due to the fact that the final construction plans and predicted impacts are largely unknown until the final design stage. This process however doesn't allow stake holders to understand the proposed impacts before any particular alternative is selected. Please provide the details as to these impacts in a new DEIS so the public can properly comment on the impacts to wetlands. This would be required under NEPA. It is clear that stream realignments that will be done in conjunction with the Army Corps of Engineers is a part of the 404 process. DEIS 3.3-25. These stream re alignments are impacts to wetlands and must be studied in a separate NEPA process with public notice.

### **Air Quality**

Out of all the resources discussed within the DEIS perhaps its air quality that is the one resource that is already heavily disturbed already. As the DEIS concedes the study area already accounts for more than 90% of the state's criteria pollutant emissions from oil and gas due to the heavy concentration of this industry in the Uinta Basin. The area is particularly polluted in terms of its statewide contribution for pollutants such as Nitrogen oxides, sulfur dioxide, VOCs, benzene and POMs. Unfortunately this has likely led to several areas being in violation of NAAQS such as in the Roosevelt, UT area for ozone. The FEIS should fully analyze the impacts from this project and other area projects' cumulative effects on air quality and global climate change. The multitude of different oil and gas projects within the Uinta Basin in conjunction with the proposed rail way should be included in an emissions index to determine the combined impact on local air quality and global climate change.

For all these reasons the Surface Transportation Board should select the no action alternative as this is the only one that would sufficiently protect the resources mentioned above. None of the action alternatives will protect these resources in any reasonable or meaningful way.

Sincerely,

/s/ Joel Ban  
Salt Lake City, UT