



State of Utah

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Office of the Governor
PUBLIC LANDS POLICY COORDINATING OFFICE

REDGE B. JOHNSON
Executive Director

EI-30759

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Sent via email:

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Joshua.Wayland@stb.gov

Joshua Wayland, PhD
Surface Transportation Board
c/o ICF
9300 Lee Highway
Fairfax, VA 22031

Subject: **Uinta Basin Railway Draft Environmental Impact Statement**
Docket No. FD 36284
RDCC Project No. 76724

Dear Mr. Wayland:

The state of Utah (State), as a Cooperating Agency, appreciates the opportunity to review and comment on the Draft Environmental Impact Statement (DEIS), published October 30, 2020. The State appreciates the diligent work of the Surface Transportation Board's Office of Environmental Analysis (STB or OEA) to analyze the proposed rail line and any environmental impacts from the project. The State supports the conclusion of the OEA that the environmental impacts from this project will be mitigated for or addressed to reduce impacts from the project.

The Uintah Basin Railway project supports the development of key infrastructure needed to transport energy resources to market, such as road lines and pipelines, which is a key goal of Duchesne and Uintah counties. *See, e.g.* Uintah County Resource Management Plan at page 68. The rail line will provide future opportunity to transport a wide variety of commodities to world markets. The State supports the proposed Whitmore Park Alternative. The Whitmore Park Alternative best meets the purpose and need for the project and avoids or minimizes major environmental impacts compared to the other action alternatives. The State provided scoping comments May 9, 2020, and as a Cooperating Agency provided

administrative comments March 25, 2020, June 29, 2020, July 20, 2020, August 28, 2020, and October 2, 2020. The State thanks STB for incorporating aspects of those comments into the proposed rule. The State incorporates the previous comments by reference and provides the additional technical and general comments for your consideration.

The railway is a vital infrastructure asset for the economy of the Uinta Basin, which is heavily focused on oil and natural gas development and will be a critical catalyst for new production by creating better access to world markets. The railway will be a vital stimulant to economic opportunity and job creation for the four counties in the basin and the Ute Indian Tribe. As such, STB should finalize the EIS in an expeditious manner.

The State appreciates STB's leadership moving this important project forward. The Uinta Basin Railway will be influential in achieving the counties' transportation needs while maintaining prudent environmental protections. Please direct any other written questions regarding this correspondence to the Public Lands Policy Coordinating Office at the address below, or call the phone number listed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Redge B. Johnson', with a long horizontal line extending to the right.

Redge B. Johnson
Executive Director

Technical Comments

A. Air Quality

Current air quality data indicates that the Basin ozone nonattainment area will not attain the ozone National Ambient Air Quality Standard (NAAQS) by August 3, 2021, as required, and may soon be reclassified from marginal to moderate status. This reclassification would require the UDAQ to develop an attainment State Implementation Plan (SIP), and new development in the Basin will need to be evaluated against that plan.

The focus of the DEIS is the construction of the railway and the operation of trains. As such, the air quality impacts were assessed on that activity, with the associated truck traffic in section 3.7. There was also an evaluation on the increased oil and gas production that would be a probable by-product of the railway construction and its impact on air quality that is assessed in the Cumulative Impacts in section 3.15. The DEIS anticipates from 4-11 trains/day with 100 tank cars/train traveling this route. In general, it is acknowledged that the DEIS action pathway (i.e., construction of the tracks) will have an air quality impact, but not cause any greater number of NAAQS violations than what currently exists. In the DEIS, the regional air shed area that was evaluated was much larger than the current ozone nonattainment area. During wintertime inversions when high ozone events occur, there is little to no movement of air in or out of the area. Potential contributions of the NO_x and VOC precursors to the formation of ozone are significantly greater in the nonattainment area than when spread through the regional air shed, as was evaluated in the DEIS. The likelihood of an increased impact in the nonattainment area should be noted.

The Cumulative Impact evaluation utilized the air quality models performed for the Monument Butte EIS, since that project evaluated a larger amount of oil and gas well development. This comparison does appear to be an adequate evaluation with the conclusion that there would be no new exceedances of the ozone NAAQS. However, unlike the Basin, the Monument Butte project was based upon a ‘net zero’ provision for the development of any new wells. This should be noted in the evaluation made in the Uinta Basin Railway Final EIS, and a demonstration made that the same ‘net zero’ provision is in place for this DEIS to validate that comparison. Further, this project may be subject to a General Conformity analysis by EPA due to the increased oil/gas production the project will facilitate in an area that already has regular exceedances of the ozone NAAQS.

Future development and permitting of air emission sources in the Basin may be challenging due to the impact of reclassification and stricter requirements for the ozone

nonattainment area. The Utah Division of Air Quality is committed to working with sources and operators to look for innovative and economically feasible solutions to the potential impact on air quality. The ability to continue to grow the oil and gas production in the Basin will require close cooperation among all regulatory agencies to not only decrease exceedances of the NAAQS, but to improve current air quality conditions.

B. Water Resources

The DEIS supports OEA's conclusions that the Whitmore Park Alternative would permanently affect the smallest total area of surface waters and wetlands, while the Wells Draw Alternative would affect the largest area. However, the OEA may want to take another look at the potential impacts that the project may have on water resources. Some of the impacts to waterways may have been overstated. After reviewing the DEIS, it appears there is an assumption that impacts from the project on waterways are the same regardless of whether or not the waterway is a perennial river, an intermittent stream, or a man-made canal. The OEA should revise the DEIS to clearly distinguish the impacts the project will have on different waterways. For example, Table 3.3-12 implies that all surface water crossing will increase flow and down cuts and increase erosion. Yet, the impacts on water flows and the potentials for increase erosion are very different for an ephemeral wash versus the impacts on a year around stream.

Further, failing to distinguish between impacts to different types of surface water will create severe overestimates of potential impacts. Table 3.3-12 identifies the number of surface water crossing structures that will likely be needed. When looking closer at most crossing, it appears that a majority of crossing will be over small ephemeral washes and will have little to no downstream impacts. Though, as written, the DEIS places all crossings together based on culvert size which drastically overestimates potential environmental impacts.

Not only will separating out waterways allow for a more specific impact analysis, it will also help in developing more specific recommendations for mitigation measures. The State believes there may be different mitigation measures needed to offset impacts to flows and surface hydrology based on the actual impact to a waterway. For example, mitigation may not be recommended for de-minimus impacts to minor ephemeral streams, while impacts that severely impact flows, drainage patterns, and long-term hydrology of an area may require a different mitigation approach, as noted in Chapter 3, 3-25. The specifics behind what type of mitigation may be recommended to offset a certain type of waterbody or waterway should be more clearly identified in the Final EIS.

i. Impacts to Impaired Surface Waters

Table 3.3-13 should be clarified to show that water quality may be potentially impacted only within flowing waterways. The OEA should remove the reference that the entire acreage within the watershed boundary will be impacted by impaired waterways since the metric is misleading.

ii. Floodplains

The project crosses flood plains in Uintah and Duchesne counties that could be impacted. The DEIS states that the Coalition will design culverts and bridges in FEMA mapped floodplains. The State requests that language is added to the DEIS to note that the Coalition will also consult with local counties and the State engineer to avoid and minimize impacts from the project and comply with any local development and permit requirements at the local and state level.

iii. Impacts to Wetlands

STB should clarify the impacts that the project will have on wetlands. As written, the DEIS states that the project will indirectly fragment wetlands. Chapter 3, page 3-33 should clarify that any fragmentation will be minimal because the surface wetlands will remain connected through installing culverts and ensuring wetlands stay intact. The DEIS should be modified to clearly note that impacts to wetlands will be updated when the Section 404 Clean Water Act permitting process is finalized.

The State looks forward to continuing to work with OEA and other cooperating agencies to clarify the analysis in this section.

Biological Resources

i. Fish

OEA should clarify the impacts on fisheries and fish habitat. As written, the DEIS assumes that all surface waterways provide habitat for fish. Perennial and intermittent streams, canals, and ponds provide the most likely habitat for fish, while ephemeral washes and low-flow irrigation ditches likely do not provide habitat for fish. Further, the DEIS should clarify that not all bridges and crossings and other development will impact fish. The State requests that the OEA work with the State to more clearly identify what waterways provide habitat for fish, and whether those waterways will actually be impacted. This more

refined analysis will provide a clearer picture of impacts to fish and riparian habitat and will remove certain ephemeral streams and low-flow irrigation ditches that typically do not provide fish habitat.

ii. Wildlife

The proposed areas for the railroad provide important habitats to the local wildlife, as well as recreational opportunities to the surrounding communities. In this project, the State and impacted counties are seeking balanced and reasonable development of the rail line, while continuing to conserve habitat. For example, as noted by the Carbon County Resource Management Plan, the plan supports responsible wildlife management and ensures that wildlife interests are given due consideration in all public land use and resource development decisions. See Carbon County Resource Management Plan, wildlife page 58, https://rmp.utah.gov/wp-content/uploads/Carbon-RMP-Book_23May2017.pdf. The State, through the Public Lands Policy Coordinating Office and the Utah Division of Wildlife Resources (UDWR), previously provided substantial information in regard to impacts to greater sage-grouse, and requests the information on conservation and mitigation continue to be recommended.

UDWR requests the OEA consult with the applicant and analyze the following points:

- Regular carcass removal should be better defined (i.e., weekly, monthly, et cetera) in BIO-MM-12.
- In addition, when rail employees remove carcasses away from the rail line the Seven County Coalition should track and report carcass data, including location, species, and number to UDWR quarterly or annually. UDWR has a mobile telephone app that accommodates data collection outside of cell phone coverage. UDWR can share the app, which would be useful for recording carcass locations for carcass-removal contractors or rail line employees. If specific locations are found to have higher than expected wildlife-train strike rates, further coordination should be initiated, and potential mitigation mechanisms should be developed to limit any unforeseen wildlife-train strikes above those analyzed in the DEIS.

A. Wildfire Ecology

OEA should update the DEIS to include fires that occurred in the project area. See section 3.4 page 13. For example, in 2018, the Dollar Ridge Fire burned approximately 69,000 acres in Duchesne County. Further, in 2020, the East Fork Fire Burned additional

approximately 90,000 acres. Utah Division of Forestry, Fire and State Lands and the Division of Emergency Management can provide OEA with the most up-to-date information on fires. The State asks to be invited to participate in the development of the wildfire management plan because of potential effects on vegetation and wildlife habitat, and the State's ability to mitigate fire impacts.

B. Noxious and Invasive Weeds

The DEIS notes that the Coalition will coordinate with the Ute Tribe and will commit to voluntary mitigation that will include the policies and strategies in Utah's Strategic Plan for Managing Noxious and Invasive Weeds. With the potential effects on vegetation and wildlife habitat, the State asks that UDWR be included in the preparation of the noxious and invasive weed control program. Similarly, all counties impacted by the project should also be coordinated and the Counties' Resource Management Plans and noxious weed programs should be utilized to minimize any impacts from noxious weeds.

C. Land Use and Recreation

The State would like the Final EIS to identify potential hunting and recreation access points. The State recommends the Coalition work with the State and other stakeholders to access points, potentially to mitigate from any loss of access through developing provide at-grade or below-grade pedestrian/equestrian crossing structures to allow public access to the 1,556 acres that would otherwise be cut off to public access within the Wells Draw Alternative.

D. Socioeconomics

OEA should revise the DEIS to include additional numbers and analysis identifying the additional socio-economic benefits of the proposed project. Energy is a \$20.9 billion industry in Utah, generating \$656 million in state and local revenues (including \$77 million directly for education through the Utah School and Institutional Trust Lands Administration in 2013). There are more than 10,000 direct energy jobs in the state, a total that expands to almost 40,000 when indirect and induced employment is included. The State Resource Management Plan at page 67, as noted by the Uintah County Resource Management Plan, states "*...the energy industry is vital to the Uintah County economy. . . Oil made the largest contribution to the value of Utah fuel production in 2014, with a value of \$3.2 billion, which was about \$265 million (9%) more than in 2013. About 96% of the oil produced in Utah during 2014 came from Duchesne, Uinta, San Juan, and Sevier Counties (in decreasing production order). The five largest producing oil fields in 2014, Monument Butte (Duchesne*

and Uintah), Altamont (Duchesne), Greater Aneth (San Juan), Bluebell (Duchesne and Uintah), and North Myton Bench (Duchesne), accounted for about 51% of Utah oil production.” See Uintah County Resource Management Plan at page 17, <https://rmp.utah.gov/wp-content/uploads/Uintah-CRMP-w-Appendix.pdf>.

The State appreciates the OEA’s analysis of the benefits that the project will bring by transporting crude oil from the Uinta Basin to national markets. This, in and of itself, will provide more stable and reliable reach to different markets, which should help the Uinta Basin economies. As the DEIS notes, depending on future market conditions, an estimated 3.68 to 10.52 trains per day along the proposed rail line, including loaded and unloaded trains will occur, and provide additional jobs and income for residents and additional tax revenues.

OEA may want to identify additional metrics to discuss the benefits of consistency that the project will bring to the Tri-County region. For example, the Uinta Basin has seen boom and bust cycles that have impacted employment numbers for over 40 years. The employment rate grew at a percentage of 12 percent during 2008, only to shrink by more than 20 percent in 2009 when a bust cycle began. Similarly, the employment growth in 2011 grew by more 7 percent in 2011 during another boom cycle only to see a 14 percent decrease in jobs in 2016 during another bust cycle brought on from market conditions and the inability to get product to market. During the boom of 2008, Uinta County saw almost a 31 percent growth in Gross Taxable Sales only to see that same growth decrease and drop down over 40 percent in 2009 when a bust cycle began. The State will work with Duchesne, Carbon, and Uintah counties to identify metrics that the OEA should include in the Final EIS to better identify economic impacts from the project. As noted by the Carbon County Resource Management Plan, the OEA must analyze impacts of natural resources “...on a basis that considers not just environmental impact but also impacts to the local communities and its citizens for job losses and infrastructure reductions.” Carbon County Resource Management Plan, Energy page 36, https://rmp.utah.gov/wp-content/uploads/Carbon-RMP-Book_23May2017.pdf.

Further, the State asks the OEA to review and include the economic analysis of the current and foreseeable economic conditions contained in the Uintah County General Plan and Section 25 of the Duchesne County General Plan.

Duchesne and Uintah counties have the least diversified economies of all of Utah’s 29 counties. OEA should clearly identify that by providing a rail line, and the ability to effectively diversify the counties’ economies will not only provide stable markets and better

wages, but will also allow citizens of those counties to invest in new technologies, and have more time to get out and use the beautiful lands in the region. The increase of incomes will diversify local economies and provide a better quality of life, which should be emphasized in the DEIS.

OEA should note that construction activities adjacent to scenic byways and backways, which are noted as a negative impact to the socio-economic environment, will be mainly temporary. Furthermore, the majority of the negative impacts from the project including, cut and fill, new bridges, and drainage culverts during the construction period, will have been mitigated. OEA should include additional language that notes the construction-related quality of life impacts will be temporary in nature and mostly mitigated.

E. Cumulative Impacts

The State appreciates the OEA's analysis of cumulative impacts contained thus far in the DEIS. As public comments on this section come in, the State asks that OEA work with the State to review public comment and identify whether or not any additional modeling or analysis is needed. The State looks forward to working with OEA to continue to review the models, data, and conclusions in this section and review the best available information to ensure that OEA has adequately analyzed cumulative impacts of this project.

F. Chapter 4: Mitigation Measures

The State supports the mitigation measures and protocols identified in Chapter 4. The mitigation measures identified in the DEIS will assist in avoiding, minimizing, and compensating for some impacts that may occur from implementing the project.

i. Impacts to Sage Grouse

The Whitmore Park Alternative and the current solutions to mitigate impacts to sage-grouse will result in a net gain to sage-grouse brood rearing and wet meadow habitat for sage-grouse. The State looks forward to taking of steps to avoid and minimize impacts to sage-grouse habitat during construction and maintenance of the rail line. The State is committed to continuing to explore and develop potential strategies to avoid or minimize impacts to sage-grouse habitat, when a preferred alternative is selected and developed. Moreover, the Coalition has already taken significant steps to avoid and minimize impacts to sage-grouse leks by re-routing the rail line away from leks and summer brood rearing

habitat, as recommended by the State, a step likely to provide long-term benefits to sage-grouse in the Carbon Sage-grouse Management Area (CSGMA).

The Utah Conservation Plan for Greater Sage-grouse (2019) recommends that voluntary compensatory mitigation should occur at a ratio of four acres restored for every one acre directly impacted from a project. The compensatory mitigation ratio was developed with the aim of replacing lost habitat with additional functional habitat. Typically, habitat restoration occurs through pinyon/juniper removal. However, habitat can be restored using other methods.

The Emma Park area provides year-round habitat for sage-grouse, with one of the most limiting factors to the population being summer brood-rearing habitat from a lack of wet meadows. In addition to other avoidance and minimization measures discussed between the Coalition and the State, the Coalition will incorporate the recommended compensatory mitigation for impacts for the Uinta Basin Project Railway project by working with the State in the creation of wet meadows. Wet meadows or other mesic areas provide grasses, forbs, and insects critical for meeting dietary needs of sage-grouse broods, especially during summer as food becomes sparser due to the typical hot and dry summer weather in the CSGMA.

It is anticipated that by avoiding, minimizing, and through providing compensatory mitigation to benefit sage-grouse, the proposed project will not negatively impact the greater sage-grouse population that uses the general area over the long-term. Based on the State's expertise, and what has been observed in the project area, the State finds the proposed compensatory mitigation solution identified above suitable to maintaining and restoring essential wet meadow habitat in the CSGMA.

ii. Additional Mitigation Measures

As the STB works with U.S. Fish and Wildlife Service and reviews additional mitigation measures, the State requests that the Coalition and OEA work with the State to identify potential mitigation measures for listed plants and wildlife.