

**Seven County Infrastructure Coalition's
Comments on the Uinta Basin Railway
Draft Environmental Impact Statement**

FD 36284

February 12, 2021

The Seven County Infrastructure Coalition submits these comments on the Draft Environmental Impact Statement for the Proposed Uinta Basin Railway, dated October 30, 2020. As an initial matter, the Coalition thanks the STB's Office of Environmental Analysis ("OEA") and the Cooperating Agencies¹ for their efforts in compiling this thorough document in an efficient and timely manner. The DEIS is an important milestone in moving this critical project forward, and the Coalition looks forward to issuance of the final EIS.

The Coalition has reviewed the DEIS and, in general, supports the analysis provided therein. While the DEIS concludes that the construction and operation of the project has the potential to result in certain adverse environmental impacts, OEA has correctly determined that the vast majority of these impacts can be mitigated through appropriate measures. As OEA and the Cooperating Agencies move forward to completing the final EIS, the Coalition anticipates working with OEA to determine whether there are additional mitigating measures can be taken to further reduce any remaining impacts from the Project.

While the Coalition generally agrees that the DEIS provides a sound and thorough scientific analysis, there are certain places within the document where OEA has inaccurately overstated impacts of the Project, particularly the potential impacts to water resources and biological resources. This is primarily due to the apparent assumption that impacts are the same regardless of whether the surface water is a perennial stream, intermittent stream, ephemeral stream, pond, playa, or ditch/canal. In addition, OEA has improperly included mitigation measures for impacts to agricultural lands that are more appropriately handled under Utah state law. These and other issues are further addressed below.

¹ The Cooperating Agencies include the U.S. Army Corps of Engineers, the Bureau of Land Management, the U.S. Forest Service, the Bureau of Indian Affairs, and the State of Utah Public Lands Policy Coordinating Office.

I. Water Resources

The Coalition offers the following comments on Section 3.3 of the DEIS:

Surface Water Hydrology

The introduction to Section 3.3.3.1 discusses how the Coalition intends to design the rail line to maintain drainage patterns and not significantly impede flows that would damage the infrastructure. For example, stream crossing features would include energy dissipation at the culvert outlets to reduce scour and protect the culverts and rail embankment from being undercut. These energy dissipation features will also reduce the flow velocity to better match existing flow characteristics.

The Coalition appreciates OEA's recognition that the Coalition's proposed rail design and mitigation measures will offset the potential surface water hydrology impacts. However, *the potential* for increased velocities and erosion (as well as the number of crossings [which are mostly ephemeral washes] is used in the DEIS to characterize the impacts to water resources as significant and unavoidable. The Coalition believes this conclusion in the DEIS is inaccurate and unsupported. The Coalition's rail line design would minimize impacts because perennial and intermittent streams would be crossed with bridges or culverts that span the entire stream channels where practical, and energy dissipation features would be incorporated at culvert outlets for ephemeral stream crossings. In addition, the proposed voluntary mitigation, OEA's recommended mitigation, and the conditions of a CWA § 401 certification will further reduce any potential impacts to surface water hydrology. Further, any minor increases in erosion will not contribute sediment at levels that would lead to water quality degradation.

The DEIS should distinguish between the type of surface water impacted when discussing potential impacts. For example, Table 3.3-12 highlights surface water crossings by crossing structure. But the vast majority of these crossings are over ephemeral washes and would be expected to have minimal downstream impacts. Lumping all crossings together based on culvert size results in an overestimate of potential impacts.

The DEIS should also explicitly distinguish between the type of surface water impacted when discussing mitigation measures. For example, on page 3.3-25, the DEIS discusses mitigation to maintain existing surface water hydrology patterns, flow conditions, and long-term hydrologic stability. While the Coalition's goal will be to maintain existing surface water drainage patterns for perennial waters, to the extent practical, the same degree of mitigation will not be needed for smaller intermittent streams or ephemeral washes without riparian habitat or adjacent aquatic habitats. For ephemeral washes, energy dissipation at the culvert outlets will reduce velocities and not significantly increase

erosion potential downstream. The DEIS should be clear that specific mitigation measures needed, if any, depend on the type of surface waterbody.

Stream Channel Realignment

Similarly, when discussing stream channel realignments (see page 3.3-25), the DEIS should distinguish between jurisdictional and non-jurisdictional surface waters. The Coalition will coordinate with the U.S. Army Corps of Engineers and the Utah Division of Water Rights for realigning Waters of the U.S. and Waters of the State of Utah, respectively. However, such coordination is not required for ephemeral streams if they are not jurisdictional.

In addition, after summarizing mitigation measures for stream relocations, the DEIS concludes that "mitigation measures would offset the impact of stream realignments, but some impacts would be unavoidable." Page 3.3-25. However, additional compensatory mitigation will be incorporated into the project's CWA § 404 permit mitigation plan to ensure that such impacts are fully mitigated. The DEIS should take this compensatory mitigation into account.

Water Quality Degradation

The DEIS acknowledges that there are highly erodible soils throughout the watershed and many of the streams, particularly the ephemeral washes, are highly incised. Yet, the DEIS concludes that "fugitive dust generated by rail operation and maintenance vehicles could also affect water quality by depositing fine sediments into surface waters." Page 3.3-28. This conclusion is not supported. With VM 23, the Applicant commits to implementing fugitive dust controls during construction. Therefore, any sediment loading from fugitive dust would be de minimis compared to other sediment loading from the natural condition of the watershed and is therefore unlikely to affect water quality.

In addition, the DEIS concludes that releases of Polycyclic Aromatic Hydrocarbons (PAHs) from rail operations could degrade surface water quality. Page 3.3-28. This conclusion is based on the possibility of PAHs being depositing onto the rail bed, where they could be exposed to precipitation and storm flows that would carry them into adjacent surface waters. This is unlikely. As the DEIS itself acknowledges, PAHs stick to solid particles and are not easily dissolved. See page 3.3-28. This means that runoff from the rail bed is not likely to contribute PAHs to adjacent surface water. Because the vast majority of the rail line is over uplands, and the amount of PAHs directly discharged to surface waters would be minor, there is no support for the conclusion that PAHs from rail operations may degrade surface water quality.

In fact, given the pervious nature of ballast, stormwater is more likely to infiltrate into the soil than to run-off into surface waters. For this reason, rail lines do not generate

stormwater runoff for most storm events. And to the extent run-off is generated, these flows will not be concentrated and instead will sheet flow off the right of way where it will infiltrate into adjacent lands. For these reasons, no pollutant loadings would be expected from the rail line itself. Therefore, the recommended post-construction BMPs (WAT-MM-9) are not needed.

Impacts in Section 303(d) Assessment Units

Table 3.3-13 shows rail line distances and impact areas for each action alternative within Section 303(d) impaired assessment units. Page 3.3-40. The numbers provided in this chart are misleading. Water quality regulations apply to flowing waters, not the entire watershed boundary. Representing the total acreage of the rail alignment within the various watershed boundary does not provide a useful metric for measuring potential impacts to impaired surface waters.

Floodplains

The DEIS states that the Coalition would build *all* culverts and bridges to clear the predicted 50-year flood event water elevation without causing a backwater increase. Page 3.3-30. The Coalition would like to clarify that this commitment is only intended for streams within a regulatory floodplain or larger perennial or intermittent streams. This design measure is not needed for ephemeral washes, streams without a regulatory floodplain, or streams without sensitive adjacent land use.

Wetlands

The DEIS discusses the potential indirect impacts from fragmentation of wetlands. Page 3.3-33. However, the DEIS should clarify that any such impacts are expected to be minimal. This is because crossing culverts would be installed to connect wetlands to the source of hydrology, where practical. The Coalition will work with the USACE to identify the potential for indirect impacts due to wetland fragmentation, and if unavoidable, the Coalition will mitigate for the additional impact.

The DEIS also rightly concludes that it is not possible to quantify the extent of potential indirect impacts to wetlands at this point in time and that, instead, a methodology for determining such impacts will be addressed as part of the CWA Section 404 permitting process. Unavoidable impacts will be appropriately mitigated. In light of this, the DEIS should be clear that the quantification of wetlands adjacent to the rail line is not a determination that such wetlands will be impacted. In particular, Table 3.3-11, which quantifies the acreage of wetlands adjacent to the rail line, should be modified to make this explicit.

DEIS Conclusion on Impacts to Water Resources

The DEIS concludes that, even with the proposed voluntary and recommended mitigation measures, adverse impacts to surface waters and wetlands would be unavoidable. It then states that these unavoidable impacts would be significant for any Action Alternative “due to the large number of surface water crossings and the large area of potentially affected wetlands.” For the reasons discussed above, this conclusion is not supported. First, most surface water crossings are deeply incised ephemeral washes. Second, the DEIS shows only 3 acres of permanently impacted wetlands. Third, there are highly erodible soils throughout the watershed that contribute sediment to the streams and affect water quality. While OEA is unable to quantify indirect impacts to wetlands at this point, such impacts are not likely to be significant for the reasons discussed above. Finally, the mitigation measures proposed by the Coalition and those recommended by OEA are more than sufficient to substantially reduce any of these identified potential impacts. OEA should conclude that there are not likely to be significant adverse impacts to water resources.

II. Biological Resources

The Coalition offers the following comments on Section 3.4 of the DEIS:

Fish

The DEIS states that perennial, intermittent, and ephemeral streams, as well as ponds, ditches, and canals in the study areas provide habitat for fish. Page 3.4-9. This is not accurate. Ephemeral washes generally do not provide suitable habitat for fish.

Table 3.4-3 lists fish species known to occur in the study area watersheds and documented in perennial streams crossed by the proposed rail line. However, the endangered Colorado river fish do not occur in Duchesne County. See Strawberry River Restoration Plan, available at <https://deq.utah.gov/legacy/programs/water-quality/watersheds/docs/2015/08Aug/StrawberryRiver.pdf>.

The DEIS states that construction of the rail line, specifically bridges and culverts at stream crossings) could injure or kill fish. Page 3.4-32. It then references Table 3.3-12, which lists the bridges and culverts for each Action Alternative. This reference is misleading. The majority of crossings do not involve surface waters with aquatic habitats. The final EIS should explain which crossings actually involve aquatic habitats.

Similarly, the DEIS overstates potential impacts to fish when comparing each of the Action Alternatives. See pages 3.4-32-33. Most of the impacted surface waters are not fish-bearing streams. Ephemeral streams, and many intermittent streams and ditches, in the

study area do not provide habitat for fish. References in this section to tables showing impacts to surface waters are misleading for the same reason.

Special Status Species

As a general matter, the Coalition recommends that the final EIS provide a description of the habitat requirements for each species. The Coalition believes this information is needed to properly support conclusions about whether such habitat is present.

The Coalition also recommends that the final EIS clearly identify where the information on habitat is from. For example, although not stated, the habitat data shown in Figure G-2 in Appendix G comes from the U.S. Fish and Wildlife Service. Likewise, Table 3.4-14 appears to contain data from both the U.S. Fish and Wildlife Service and the Coalition field surveys, but this information is not clearly provided. And Table 3.4-16 does not provide the data source for Mexican spotted owl habitat.

In Table 3.4-7 (and Table 3.4-14), the DEIS inaccurately represents the Barneby ridge-cress habitat as defined in the Coalition's field surveys. Specifically, this table presents the pinyon-juniper and white shale as two separate habitats, but the white shale habitat is a subset of the pinyon-juniper habitat. We also note that the pinyon-juniper habitat reported in Table 3.4-7 for the Indian Canyon Alternative appears to be approximately 35 acres less than in the Coalition's field surveys, which reported 288.61 acres of pinyon-juniper habitat for the Indian Canyon study area.

Table 3.4-15 shows the estimated acreage of permanent removal and temporary disturbance to snowshoe hare habitat. The final EIS should specify that the numbers provided are for all hare habitat types.

With regard to the conclusions on Section 3.4.4 (Mitigation and Unavoidable Environmental Effects), the final EIS should distinguish between known occupied habitat (e.g., the *Sclerocactus*) and suitable habitat that is not necessarily occupied (e.g., Ute ladies'-tresses and Barneby ridge-cress). In addition, the final EIS should explicitly identify the expected impacts that would be unavoidable and characterize each of these impacts by describing their magnitude and geographic extent.

III. Socioeconomics

Section 3.13.3.2 addressed displaced economic activity. To reduce impacts to ranch and farm operations, OEA recommends mitigation measures *requiring* the Coalition to "compensate landowners for direct loss of agricultural land in the right-of-way and the

indirect loss of agricultural land from severance; relocate, replace or provide compensation to landowners displaced capital improvements; and limit loss of access to agricultural lands by providing alternate temporary access points if main access routes are obstructed during construction.” This mitigation requirement is overbroad and inappropriate here. The appropriate mitigation measures and potential compensation to impacted landowners are questions to be determined through negotiations with impacted landowners and/or under Utah state law, not by the Board.

IV. Cumulative Impacts

Rail Terminals

Historically, the regulations implementing NEPA have required federal agencies to consider three types of impacts: direct impacts, indirect impacts, and cumulative impacts.² A cumulative impact is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other action.”³

In the DEIS, OEA considers future rail terminal facilities to be reasonably foreseeable future actions and thus includes such terminals in the cumulative impacts section of the DEIS. Specifically, the DEIS states that “[i]f the Coalition were to construct and operate the proposed rail line, OEA anticipates that new rail terminals would be constructed at the terminus points near Myton and Leland Bench to transfer commodities between trucks and rail cars.” Page 3.15-7.

OEA has appropriately considered potential future rail terminals as cumulative actions in the DEIS. As OEA recognizes, the Coalition is not proposing to construct any rail terminals and has no plans to do so. Rather, any future rail terminals will be constructed by other unknown third parties. There are no pending proposals for such facilities; thus, the number, location, and size of any future terminals, as well as the timing for constructing such terminals, are also unknown.

As the Board knows, an applicant granted authority to construct and operate a rail line obtains a common carrier obligation, meaning that it has a statutory duty to provide “transportation or service on reasonable request.” 49 U.S.C. § 11101(a). A railroad may not

² See 40 C.F.R. § 1508.25(c) (1978) (superseded). In July 2020, the Council on Environmental Quality revised the regulations implementing NEPA and removed the requirement to consider cumulative impacts. See 85 Fed. Reg. 43304 (July 16, 2020). We understand the OEA has elected to issue the environmental impact statement for the Uinta Basin Railway under the previous NEPA regulations.

³ 40 C.F.R. § 1508.7 (1978) (superseded).

refuse to provide service merely because to do so would be inconvenient or unprofitable. *G.S. Roofing Prods. Co. v. Surface Transp. Bd.*, 143 F.3d 387, 391 (8th Cir. 1998). This means that any shipper can request service from the Uinta Basin Railway, and those shippers can decide to construct and operate their own terminal facilities, or to use terminal facilities constructed and operated by other third parties. There are more than thirty lineal miles of the proposed Uinta Basin Railway route that have adequate space and geography for the construction of a terminal. Moreover, a shipper could locate a terminal at some distance from the Uinta Basin Railway and construct an independent industrial spur track or private line of rail to connect to the Uinta Basin Railway. Each shipper that ultimately uses the Uinta Basin Railway could construct its own terminal independently of every other shipper, resulting in several dozen terminals of various sizes and for various commodities, each financed, constructed, and operated independently of each other.

The Coalition would like to stress that the proposed rail line is independent of any future rail terminals. First, financing and construction of the rail line does not depend on the presence of a terminal. The Coalition's private partners, Rio Grande Pacific Corporation (RGPC) and Drexel Hamilton Infrastructure Partners (DHIP), have engaged in and continue to engage in commercial discussions with potential shippers of commodities on the rail line, including oil, aggregates, fracking sand, hay, and lumber. These conversations involve "take-or-pay" agreements, which are contractual obligations to ship a specific amount of a commodity over a specific period of time and do not include any obligation to construct and operate a terminal. Importantly, execution of these agreements is not contingent on a terminal being sited or proposed by any party. In fact, several oil producers and midstream companies have stated their desire to construct their own terminals at locations they choose, of a size they choose, independently of the railway.

Second, a terminal of any type is not required for the Uinta Basin Railway to be functional and operational. Freight consisting of many different commodities can be loaded and unloaded from Uinta Basin Railway trains at numerous locations along its proposed route without any site improvements, using mobile loading or unloading machinery and driving trucks on existing roadways or across unimproved land until adjacent to the railway. This could include crude oil, frac sand, sand and gravel, lumber, cement, or wind turbine components, of which numerous examples can be found in the U.S. being loaded and unloaded from trains with no fixed infrastructure or terminal in place.

In fact, several Uinta Basin oil producers presently are loading substantial quantities of crude oil onto railway trains without any fixed or permanent infrastructure in place, or planned to be in place, other than the railway track itself. For example, at Wildcat, Utah, an oil producer is currently loading up to 25,000 bbl/day onto oil trains without any fixed infrastructure other than the railway track. The crude oil is pumped from the trucks directly into the railway tank cars using mobile pumps mounted on wheels that are towed behind pickup trucks to where they are needed. There are no storage tanks,

loading racks, or piping in place, and none are planned. This type of loading could occur at several different places along the Uinta Basin Railway.

Although the exact location, number, and size of future rail terminals are unknown, OEA has made the reasonable assumption for purposes of its NEPA cumulative impacts analysis that two terminals will be constructed at the Railway's terminus points near Myton and Leland Bench. These terminus points were selected because the Coalition believes that they provide access to areas of potential shipper and/or receiver interest. Specifically, as stated in the Coalition's Response to OEA's Information Request # 1 (April 19, 2019), the points are anticipated to facilitate access to the railway due to (1) proximity to traffic source; (2) topography and location; and (3) surrounding land uses. In light of these factors, it is reasonable for OEA to anticipate rail terminals at these locations and to conduct its cumulative impacts analysis based on OEA's knowledge on how similar terminals have been constructed and operated across the country.

Downstream Greenhouse Gas Emissions

The cumulative impacts section of the DEIS includes an analysis of greenhouse gas (GHG) emissions from downstream end uses of crude oil shipped on the Uinta Basin Railway, using both the low oil production scenario and the high oil production scenario. For purposes of this analysis, OEA states that it "assumed conservatively" that combustion would be the end use of all crude oil and that these fuels would add to existing fuel consumption, rather than displacing existing crude oil supplies or existing fuels from the market. Page 3.15-31.

Accurately estimating downstream GHG emissions from crude oil production is a complex task involving numerous factors, including the amount of crude oil transported by the Uinta Basin Railway, how such oil would be distributed and used for energy or lubricating oils or petrochemicals, and the extent to which such oil would displace existing crude oil or fuel sources. The Coalition understands that OEA has chosen to simplify this complex task by making conservative assumptions that show the high-end of potential downstream emissions. However, it is important that the cumulative impacts analysis place these assumptions into context. The final EIS should make clear that the cumulative impacts analysis substantially overstates potential downstream GHG emissions and that, in reality, such emissions are likely to be much lower due to displacement of existing crude oil and fuel sources.

As the DEIS properly acknowledges in Section 3.8 (Energy), crude oil transported by the proposed rail line would most likely displace other crude oil from sources outside the Basin. Page 3.8-7. The DEIS states that the volume of crude oil that would move on the proposed rail line—under either the high rail traffic scenario or the low rail traffic scenario—would amount to less than one-half of one percent of total global crude oil production. Thus, as OEA appropriately concludes, the availability of a new transportation option for crude oil from the Basin would have an insignificant effect on global crude oil

supply and a negligible impact on crude oil prices (which depend on many factors, including national policy of major oil exporting nations such as Saudi Arabia and Russia, and consumer demand for petroleum products⁴). When displacement is accounted for, the net change in global oil would be even smaller and could actually decrease.

The amount of displacement of other oil by the crude oil transported on the proposed rail line would not be less than barrel-for-barrel. This barrel-for-barrel ratio is because (1) PADD 3 refineries already have existing access to effectively unlimited volumes of oil from domestic and foreign resources; (2) PADD 3 refineries are typically “complex refineries” (a term of art that refers to a refinery equipped with process machinery that can economically process almost any crude oil type); and (3) PADD 3 refineries already have market access to domestic and global markets that typically result in full utilization of their capacity in normal economic cycles and a pro rata share of domestic and global markets in abnormal economic cycles such as experienced in 2019.⁵ However, each barrel of oil transported by the proposed rail line could potentially displace *more* than one barrel of other oil, because the crude oil type produced in the Uinta Basin is more efficient at producing refined products such as transportation fuel.⁶ Moreover, the lower transportation cost of the Uinta crude if used for lubricating oil feedstocks, relative to the lube oil currently being imported from South Korea to supply U.S. lubricating oil requirements, will make Uinta crude more attractive to U.S. refiners.

Changes in U.S. oil import sources since 2009 provide examples of displacement. Total U.S. crude oil imports have fallen as domestic oil production has increased. The source of imported oil has also changed: imports from Canada have increased.⁷ More specifically, “[d]omestic refineries’ use of crude oil from Canada has increased in nearly every year since 2009, but imports from Saudi Arabia, Mexico, and Venezuela have generally decreased. These changes in crude oil trade were driven by the relative price and refinery operational advantages for importing oil from Canada, which displaced more and more barrels from Saudi Arabia.”⁸ At the same time, U.S. oil refinery crude oil intakes

⁴ U.S. Energy Information Administration, Feb 20, 2020, Oil and Petroleum Products Explained: Oil Prices and Outlook (available at <https://www.eia.gov/energyexplained/oil-and-petroleum-products/prices-and-outlook.php>).

⁵ Carr, Housley, Dec 15, 2020, Comin’ to America, Part 4: Gulf Coast Refineries Slash Their Need for Imported Crude Oil, RBN Energy, LLC.

⁶ For example, the many refineries equipped with fluid catalytic cracking equipment will find Uinta crude more desirable than other crudes because it requires less processing and delivers a volumetric increase in the fluid catalytic cracking process. See Gamas, Erick, Cliff Avery, Gerbrand Mesu and David De Villiers, Albemarle Corporation and Alan Yahev, Newfield Exploration Company, Performance of Waxy Crudes as FCC Feeds, in PTQ Magazine, Q2 2014, p.1-4.

⁷ Energy Information Agency, March 19, 2020 (available at <https://www.eia.gov/todayinenergy/detail.php?id=43196>).

⁸ *Id.*

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have remained essentially flat⁹ at approximately 15 million barrels per day, with very little fluctuation according to price of crude oil or source of the crude oil.

In addition, the final EIS should make clear that a large portion of the Uinta Basin crude is likely to be used as lubricating oil feedstock, not for the manufacture of combustible transportation fuels. In fact, the highest use for Uinta Basin waxy crude oil is as feedstock for the manufacture of synthetic lube oil base oils. This is another reason why the estimate of downstream GHG emissions in the DEIS is overstated.

Ultimately, it may be reasonable for OEA to make conservative assumptions regarding potential impacts from the proposed Uinta Basin Railway. However, the final EIS should clearly explain why such assumptions are conservative and, where possible, place those assumptions into context. This is important so that a reader can properly understand the scope of potential impacts, the likelihood of those potential impacts, and where potential impacts are overstated.

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The Coalition appreciates the opportunity to comment on the DEIS for this important Project. If you have any questions regarding the comments herein, please contact Mike McKee, Executive Director of the Seven County Infrastructure Coalition. We look forward to assisting OEA as needed as it works to prepare the final EIS.

⁹ See Energy Information Agency, Weekly U.S. Refiner Net Input of Crude Oil (available at <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=WCRRIUS2&f=W>).