



State of Utah

SPENCER J. COX
Governor

DEIDRE
HENDERSON
*Lieutenant
Governor*

Office of the Governor
PUBLIC LANDS POLICY COORDINATING OFFICE

REDGE B. JOHNSON
Executive Director

EI-31299

September 28, 2021

Sent via email: Joshua.Wayland@stb.gov

Joshua Wayland, PhD
Surface Transportation Board
9300 Lee Highway
Fairfax, VA 22031

Subject: Uinta Basin Railway Final Mitigation Approach and Agreement for Potential Impacts to Greater Sage-grouse

Dear Mr. Wayland:

The Final Mitigation Approach and Agreement for Potential Impacts to Greater Sage-grouse from the Uinta Basin Railway project is attached. This agreement is in response to the provisions in the Final EIS requiring that the Uinta Basin Railway Coalition and the Division of Wildlife Resources come to such an agreement.

If you have further questions, please contact Jake Garfield.

Sincerely,

Redge B. Johnson
Executive Director

**Final Mitigation Approach and Agreement
For Potential Impacts to Greater Sage-grouse
From the Uinta Basin Railway**

The Uinta Basin Railway Project is a freight rail line proposed by the Seven County Infrastructure Coalition (Coalition), in collaboration with railway owner and operator Uinta Basin Railway, LLC, (UBRY). The project when constructed will provide common-carrier railway service connecting the Uinta Basin to the North American interstate common-carrier railway network. This project recognizes the importance of protecting the natural wildlife and at the same time the positive economic benefit it would provide to the State of Utah. The Coalition and UBRY have worked closely with the State of Utah's Public Lands Policy Coordinating Office (PLPCO) and the Utah Division of Wildlife Resources (UDWR) to develop this Mitigation Approach and Agreement to mitigate, minimize, and avoid impacts to the Greater Sage-grouse, a species of conservation concern, and its habitat. This Mitigation Approach and Agreement build on PLPCO's letter dated July 23, 2020, and the reply letter from the Coalition and UBRY dated September 10, 2020 (both letters are attached), which established a preliminary agreement for Greater Sage-grouse mitigation for the Uinta Basin Railway Project. This Mitigation Approach and Agreement is also guided by the recommendations provided by the Utah Conservation Plan for Greater Sage-grouse (State Plan). All parties above have worked together in a positive and collaborative effort to complete this document. The potential project-related impacts to this species, as well as measures to minimize, mitigate, or avoid these impacts, are detailed below.

The Uinta Basin Railway Project will, if constructed, pass through the Carbon Sage-grouse Management Area (CSGMA), and thus would impact Greater Sage-grouse and their habitat. The Greater Sage-grouse is native to Utah that only inhabits the sagebrush ecosystems of western North America, relying largely on sagebrush leaves and other plains plants for food. During the spring, groups of male Sage-grouse congregate on clear areas of sagebrush called leks, where they perform courtship displays at dawn to attract females. Females build nests on the ground under sagebrush shrubs, raising chicks independently during the summer. The chicks, which cannot digest sagebrush plants, rely largely on insects from wet meadows adjacent to sagebrush habitat. While not currently listed under the Endangered Species Act, the Greater Sage-grouse is a species of conservation concern to the State of Utah, and a comprehensive conservation plan has been developed by the State to prevent further decline.

MINIMIZATION, MITIGATION AND AVOIDANCE

Habitat Loss, Fragmentation, and Alteration

Avoidance and Minimization - As an avoidance measure to reduce the magnitude of habitat loss, fragmentation, and alteration, the Coalition and Uinta Basin Railway (UBRY) developed a preferred alternative, called the Whitmore Park Alternative, increasing the distance of the railway

from leks thereby reducing disturbance, while still meeting the purpose and need of the Project. The federal and state agencies considering licenses and permits determined that the preferred alternative (the Whitmore Park Alternative) provides the least habitat disturbance, and the least wetland impacts while still successfully navigating the terrain. The federal agencies considering licenses and permits are the U.S. Surface Transportation Board, the lead agency for the Environmental Impact Statement, and the cooperating agencies include the U.S. Forest Service, Bureau of Indian Affairs, and U.S. Army Corps of Engineers. State cooperating agencies include PLPCO and UDWR. The Final Environmental Impact Statement (FEIS) identified the Whitmore Park Route as the preferred alternative, this preferred alternative will minimize the direct impacts of the project footprint on Greater Sage-grouse habitat by avoiding as many leks as possible.

Compensatory Mitigation - In addition to avoiding and minimizing disturbance to Greater Sage-grouse by using the preferred alternative for the Project, the Coalition and UBRy will take voluntary compensatory mitigation measures to offset project-related disturbance to Sage-grouse habitat. The in-lieu funding will cover the development of Beaver Dam Analog (BDA) Structures for every acre of habitat that is permanently disturbed. Each BDA would be installed and maintained by the State. It is estimated that a BDA will cost \$450 per structure to install and maintain. Once a final alignment, along with siding and access roads are identified, total acres can be identified and agreed upon to compensate for disturbed habitat, at the ratio (4:1) suggested by the State Plan. UDWR reserves the right to utilize funds intended for BDA structure for mitigation measures other than BDA structures when other mitigation measures are deemed necessary.

Conservation Research - The Project will also provide \$250,000 in grants to fund Greater Sage-grouse research. Funding will be provided to the Utah Community-Based Conservation Program, Jack H. Berryman Institute for Wildlife Damage Management, Utah State University, Logan, Utah. Research will be coordinated with the Utah Division of Wildlife Resources (UDWR). Research will be prioritized within the Carbon Sage Grouse Management Area (CSGMA).

Construction Impacts

Reducing Noise and Earth Moving Impacts - Construction activities will temporarily affect the surrounding landscape and vegetation. Development of the rail line may cause temporary disturbance and potential dispersal of Sage-grouse due to noise, human presence, and vibration. The Project is dedicated to reducing the impacts to Sage-grouse mortality or injury as much as possible. While the vegetation can be restored after the conclusion of the construction, sagebrush takes years to re-establish itself, prolonging these temporary impacts.

The Project accordingly will take measures to reduce temporary construction-related noise and physical encounters with grouse, including:

- a. Using drilled pile drilling during the construction of bridges and structures within the CSGMA instead of percussive or hammered pile-driving, which is much louder.
- b. Limiting the use of horns and loudspeakers on construction equipment to only when needed to comply with safety requirements.
- c. To the greatest degree practical, concentrate all construction activities within the CSGMA to months outside of breeding and nesting season. For the purposes of this proposal, dates of breeding and nesting season last from March 1 - June 30
 - i. Nothing in this plan affects the ability for construction traffic to travel on public roadways during the breeding and nesting season.
- d. When construction avoidance is not practical during the breeding season, limit off-road construction activities within the CSGMA to the greatest degree practical, from 30 minutes before sunrise to 2 hours after sunrise. For the purposes of this proposal, dates of the breeding season last from March 1 - May 15.
- e. Not using dynamite or similar loud explosives within the CSGMA during breeding and nesting season (For the purposes of this proposal, dates of breeding and nesting season last from March 1 - June 30).

Improving Habitat - The Project will remove conifers and invasive plant species from existing sage-grouse habitat within the Project right-of-way to improve habitat.

Reducing Incidental Takes - Incidental takes will occur infrequently, given the large size and visibility of the birds, the tendency of grouse to avoid human presence, and the relatively clear, low-lying sagebrush landscape. In addition, the construction activities will occur far from the leks. However, to minimize grouse casualties, the Project will:

- Educate construction crews to make them aware of the location of the leks and how to identify and avoid Sage-grouse.
- Maintain construction fencing on the right-of-way boundary near leks to direct traffic in and out of the project to areas away from the leks.
- Engage or employ a wildlife consultant during all construction activities in the CSGMA. Consultant will be responsible for training, monitoring and reporting of non-compliance with this plan by construction personnel. The consultant will provide quarterly reports to the State of Utah regarding compliance with the plan. In the event of non-compliance, the State reserves the right to recommend additional mitigation measures.
- To the greatest extent practical, limit ground disturbance areas in sage grouse habitat to only areas identified in the design.

Fire mitigation plans - The Project will implement fire mitigation plans for construction and post-construction operation and maintenance of the railway to reduce risk of wildfires.

Operational Impacts

Operational impacts occur after construction is complete and the Project commences operation of trains.

Fire mitigation plans - The Project will implement fire mitigation plans for construction and post-construction operation and maintenance of the railway to reduce risk of wildfires.

Noise - Since the rail line will run within a mile of several leks, the railway will issue operating rules to train crews that horn use is for emergency situations only, e.g., to warn a trespasser on or near the track. Combined with the construction noise measures, these measures will minimize noise disturbance of the grouse during construction activities and during ongoing rail operations. It is anticipated that these measures will reduce the likelihood of the project interrupting Greater Sage-grouse breeding.

Predation - The Project may increase the likelihood of predation events on grouse, as well as their eggs and chicks, as tall structures erected during development may attract raptors and corvids that can use them as perches for hunting. This could lead to increased predation rates, as raptors and corvids will prey upon Sage-grouse adults, chicks, and eggs. Typical Sage-grouse habitat consists of low-lying sagebrush with few tall perches that might support predators. To minimize the impact of increased predation on the Sage-grouse, UBRy will bury power and communication lines it may construct within the CSGMA instead of using overhead power and communication lines (mounted on poles). Wayside signal masts within the CSGMA, if any, will be designed to minimize or eliminate usable perches for predatory birds. Taken together, these measures will minimize the likelihood that the Project increases predation of nearby Sage-grouse.

If no mitigation measures are taken, the Project would have adverse effects on the Greater Sage-grouse. However, the mitigation approach outlined above, guided by the State Plan and recommendations from PLPCO and UDWR, is anticipated to reduce the impacts of rail line construction on the Greater Sage-grouse. While there is no feasible way to avoid some negative impacts to Sage-grouse habitat, the Whitmore Park alternative was designated as the preferred alternative because it runs in the vicinity of the fewest Sage-grouse leks and minimizes habitat disturbance. Further, voluntary mitigation approaches taken by the Project will offset habitat disturbance caused by the Project. The measures outlined in this approach and agreement were developed in consultation with PLPCO and UDWR, and they align with the recommendations of the Office of the Governor of Utah and the State Plan. As such, the Coalition and UBRy believe that these Project measures will have minimal adverse impacts on the Greater Sage-grouse.

Summary of Mitigation Measures and Agreement

The Coalition and UBRY are proposing the following mitigation measures to PLPCO and UDWR as the Final Mitigation Approach and Agreement. The measures will be implemented in the CSGMA. The Project will:

1. Fund the compensatory mitigation measures recommended by PLPCO and UDWR. This will allow compensatory mitigation measures to offset project-related disturbance to Sage-grouse habitat. The in-lieu funding will cover the development of Beaver Dam Analog (BDA) Structures for every acre of habitat that is permanently disturbed. Each BDA would be installed and maintained by the State. It is estimated that a BDA will cost \$450 per structure to install and maintain. Once a final alignment, along with siding and access roads are identified, total acres disturbed can be identified. To compensate for disturbed habitat, at the ratio (4:1) suggested by the State Plan. UDWR reserves the right to utilize funds intended for BDA structure for mitigation measures other than BDA structures when other mitigation measures are deemed necessary.
2. Provide \$250,000 in grants to fund Greater Sage-grouse research. Funding will be provided to the Utah Community-Based Conservation Program, Jack H. Berryman Institute for Wildlife Damage Management, Utah State University, Logan, Utah. Research will be coordinated with the Utah Division of Wildlife Resources (UDWR). Research will be prioritized within the Carbon Sage Grouse Management Area (CSGMA).
3. Reduce temporary construction-related noise, including:
 - a. Using drilled pile drilling during the construction of bridges and structures within the CSGMA instead of percussive or hammered pile-driving, which is much louder.
 - b. Limiting the use of horns and loudspeakers on construction equipment to only when needed to comply with safety requirements.
 - c. To the greatest degree practical, concentrate all construction activities within the CSGMA to months outside of breeding and nesting season. For the purposes of this proposal, dates of breeding and nesting season last from March 1 - June 30.
 - i. Nothing in this plan affects the ability for construction traffic to travel on public roadways during the breeding and nesting season.
 - d. When construction avoidance is not practical during the breeding season, limit off-road construction activities within the CSGMA to the greatest degree practical, from 30 minutes before sunrise to 2 hours after sunrise. For the purposes of this proposal, dates of the breeding season last from March 1 - May 15.

- e. Not using dynamite or similar loud explosives within the CSGMA during breeding and nesting season (For the purposes of this proposal, dates of breeding and nesting season last from March 1 - June 30).
- 4. Remove conifers and invasive plant species from existing sage-grouse habitat within the project right-of-way to improve habitat.
- 5. Educate construction crews to make them aware of the location of the leks and how to identify and avoid Sage-grouse.
- 6. Maintain construction fencing on the right-of-way boundary near leks to direct traffic in and out of the project to areas away from the leks.
- 7. Engage or employ a wildlife consultant during all construction activities in the CSGMA. Consultant will be responsible for training, monitoring and reporting of non-compliance with this plan by construction personnel. The consultant will provide quarterly reports to the State of Utah regarding compliance with the plan. In the event of non-compliance, the State reserves the right to recommend additional mitigation measures.
- 8. To the greatest extent practical, limit ground disturbance areas in sage grouse habitat to only areas identified in the design.
- 9. Implement fire mitigation plans for construction and operations to reduce the risk of wildfires.
- 10. Bury power and communication lines UBRV may construct within the CSGMA instead of using overhead power and communication lines (mounted on poles).
- 11. Wayside signal masts within the CSGMA, if any, will be designed to minimize or eliminate usable perches for predatory birds.
- 12. Issue operating rules to train crews that horn use is for emergency situations only, e.g., to warn a trespasser on or near the track.
- 13. To the greatest degree practical, limit railroad operational noise to no more than 10 decibels above the ambient level at the edge of the lek during breeding season. For the purposes of this proposal, dates of breeding season last from March 1 - May 15.

September 27, 2021

This agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may and provision hereof be enforced by, any other Person.

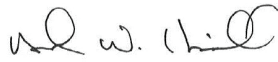


Michael J. McKee
Executive Director
Seven County Infrastructure Coalition



Robin Goodman (Sep 27, 2021 15:44 MDT)

Robin Goodman
Assistant Director
Utah Division of Wildlife Resources



Mark W. Hemphill
President
Uinta Basin Railway, LLC



Redge Johnson (Sep 27, 2021 17:40 MDT)

Redge B. Johnson
Executive Director
Public Lands Policy Coordinating
Office

September 27, 2021

Attachments