

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36616

SAVAGE TOOEELE RAILROAD COMPANY—CONSTRUCTION AND OPERATION EXEMPTION
—LINE OF RAILROAD IN TOOEELE COUNTY, UTAH

PETITION FOR RECONSIDERATION

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PETITION FOR RECONSIDERATION

Utah Physicians for a Healthy Environment (“UPHE”), Erda Community Association (“ECA”), Sid Atkin, and Kyle Mathews, pursuant to 49 C.F.R. § 1115.3, respectfully petition this Board to reconsider its April 1, 2024 Decision (“Decision”) authorizing Savage Tooele Railroad Company to construct and operate approximately 11 miles of rail line in Tooele County, Utah, subject to certain environmental conditions. In that Decision, this Board determined that the merits of the proposed construction of a new 11 mile rail line satisfy the approval requirements. This Decision is based on material errors and this Board should consider new evidence as part of its reconsideration.

Petitioners are member-based associations formed for the protection of the Utah environment from industrial pollution, and seek to preserve the Wasatch Front’s air shed, water resources, and protect the Great Salt Lake (“GSL”) wetlands and wildlife. UPHE has participated in this process and opposed this Decision throughout. UPHE provided extensive objections to the Environmental Analysis (“EA”) that the EA failed to adequately address. (*See* EI-33146). The individual named petitioners also lodged objections in this proceeding that the EA failed to adequately address. (*See* EI-33097 and EI-32699). ECA further seeks to protect its city and its residents from the harmful effects that this railroad would create directly upon resident members in Erda and neighboring communities. While it did not submit an objection to the EA, it also lodged objections to the STR exemption under the related FD 36524, raising all of the issues herein that the EA failed to adequately address. (*See* EI-31858).

The EA is profoundly incomplete and denies the obvious impact the project will have on the most affected communities and the most heavily populated communities of Utah. Savage Tooele Railroad Company's ("STR") stated purpose and needs are contrary to this Board's statutory obligation. STR's claims of reducing truck traffic and pollution defy reason and empirical evidence. Moreover, Tooele County is not in need of employment stimulus. Indeed, the proposed Savage Tooele Rail Line is contrary to the public interest, and the voluntary measures provide no public protection.

The EA fails to complete an adequate assessment of harms to biological resources, and fails to inform the public of significant environmental consequences. It fails to disclose the project's purpose and effect of increasing industrial development.

The Savage Tooele Rail Line would dramatically degrade quality of life in adjacent communities. Air quality and the ensuing public health impact would not be "de minimis." The EA also fails to assess cumulative impacts. The EA fails to consider upstream and downstream environmental and public health consequences. Indeed, a meaningful discussion of climate change impacts is lacking.

The standard for when an Environmental Impact Statement ("EIS") should be prepared is: "An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment." 42 U.S.C. § 4336(b)(1). Petitioners request this Board reverse its decision and deny the application, or at the very least require a full EIS, because of material error and new evidence that would materially change the Decision. 49 CFR § 1115.3(b). These material errors and new evidence show the devastating impact this Decision will have on the environment.

A. This Board Materially Erred in Adopting the EA Report.

This Board materially erred by fully adopting the EA and basing the Decision, in part, on the EA. The EA was severely deficient in meeting the legal requirements established by the National

Environmental Policy Act (“NEPA”) for protecting the public and the environment. Under NEPA, cumulative impacts are 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 actions” (40 C.F.R. § 1508.7). The EA did not fully examine the impact of all of the industrial development the STR is designed to incentivize.

The enabling statutes that create and empower this Board - 49 USC §§ 10101 through 11908, and the Interstate Commerce Act as amended by the ICC Termination Act, require this Board to determine whether the construction of the railway is “inconsistent with the public convenience and necessity,” 49 U.S.C. § 10901. The Rail Transportation Policy identified in § 10101 includes the policy to operate rail facilities without detriment to the public health and safety. Petitioners believe this Decision represents not only a detriment to public health and safety, but a profound degradation of quality of life in the most affected communities.

In order to approve the project, this Board must find that the project’s transportation merits, and therefore economic merits, outweigh its environmental harms. See *Eagle Cnty. v. Surface Transp. Bd.*, 82 F.4th 1152, 1180 (D.C. Cir. 2023) (citing 49 U.S.C. §§ 10501(c), 10901(b); Alaska R.R.—Constr. & Operation Exemption—Rail Line Between Eielson Air Force Base & Fort Greely, Alaska (Alaska Railroad), S.T.B. Fin. Docket 34658, 2007 WL 2875687, at *1 (STB served Oct. 4, 2007)). Here, this Board erred in not considering all the pollution, public health and climate consequences of the new railway stimulating industrial development on both the upstream and downstream communities. The economic merits do not outweigh the environmental harms.

1. EA Fails to Disclose the Project’s Purpose and Effect of Increasing Industrial Development

The EA fails to acknowledge that the true purpose of this rail line is to incentivize development of over 35 million square feet of industrial development on land that is currently open space, uplands, playa, and wetlands, and in some places less than a mile from the GSL, a critical water body on the verge of ecological collapse. The EA does not properly consider the true scope of the proposed industrial development, nor take a hard look at the consequences of this, in a valley that is facing a growing environmental crisis with regard to air pollution, water quality, and water quantity. As a result, the EA does not consider the reasonably foreseeable effects of accelerated industrial development in an area that is immediately adjacent to the ecologically imperiled GSL, and in an area with issues of declining water quality and water quantity, that also fails to meet federal clean air quality standards.

The EA ignores the evidence that communities where that “added capacity” is being sited, are becoming victims of the trend, not beneficiaries. (*See* EI-33146) The Inland Empire in Southern California is a good example. Based on the warehouse capacity in that district and the number of truck trips associated with it, if the Lakeview Business Park (“LBP”) is built to capacity with warehouses, we could reasonably extrapolate that the STR would be a primary enabler of tens of thousands of new daily truck trips and overall vehicle trips in the area. Also, the Office of Environmental Analysis (OEA) makes a questionable assumption about the market for warehouse space. If the GSL continues its ecological collapse, the market for anything in northern Utah will be collapsing too. Also, the two planned industrial projects connected to the STR are not “market based” as they are planning on receiving significant public subsidies from the Utah Inland Port Authority (UIPA).

The proximity of the Utah Inland Port in Salt Lake City and a proposed project in nearby Grantsville and its impact on the adjacent City of Erda was not satisfactorily considered. This Decision approving STR’s construction and operation of 11 miles of a new rail line in Tooele County would be a large contributor to a cascade of development consequences having far reaching, undesirable effects,

not only there, but throughout the major urban areas of the Wasatch Front where 80% of Utah's population, over 2.5 million people, live.

2. EA Fails to Inform Public of Significant Environment Consequences

NEPA's "twin aims" are to ensure that the agency (1) "consider[s] every significant aspect of the environmental impact of a proposed action, and to consider reasonable alternatives that could mitigate those impacts"; and (2) "inform the public that it has indeed considered environmental concerns in its decision-making process." *Balt. Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983) (citation omitted). "By focusing both agency and public attention on the environmental effects of proposed actions, NEPA facilitates informed decision-making by agencies. . . ." and "public involvement" in those decisions. *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 703 (10th Cir. 2009). The EA fails to achieve these requirements as fully discussed below.

Impact on Human Environment

The EA states that the Proposed Action would be consistent with the Erda general plan and with the Tooele County general plan because it would not add population to the Tooele Valley and would support new commercial opportunities in an area designated for growth while preserving the natural character of the remainder of the county." But that ignores the City of Erda's objection letter that states: "The Erda City Council has received numerous phone calls, e-mails, and face to face meetings with residents that indicates unanimous disapproval to the Railroad Extension. In fact, the Erda City Council would characterize it as a public outcry against the Railroad Extension." (*See* EI-33132)

The proposed rail line is entirely too close to many residences. This will negatively affect those residents in the most personal way and degrade entire human communities. This new rail-line construction will create tremendous noise pollution from the trains passing so close to family homes. Noise pollution creates much of the same kind of physiologic harm as air pollution, and is associated

with largely the same profile of human diseases of the main organ systems, i.e, the heart, lungs, brain, and nervous systems. It will also harm air quality and quiet enjoyment of life. It will create safety hazards of trains not being able to stop quickly being so near to houses, along with diesel trucks traveling daily on inadequate rural roads. The City of Erda proposed an alternative path, and explained the public outcry, but that was disregarded. (*See* EO-3849)

The EPA recognized the EA failed to address this issue, stating: “It is unclear from review of the EA what types of industry could be authorized and developed at the LBP due to the operation of this line. (*See* EI-32659). As such, there is no analysis of incidental spills of materials coming into and out the complex. Small leaks or accidental releases of transported materials could present a source of chronic pollution nearby and downstream in the GSL. Additionally, there is no evaluation of impacts resulting from major spills or derailment.”

The EPA recognized the EA does not evaluate the indirect impacts of industrial activity at the LBP and whether the development may subsequently impact groundwater. The failure to disclose these impacts violates NEPA, and constitutes a material error by this Board.

Impact on Water Resources, GSL and Wetlands

Ground water is the sole source of drinking water in the Tooele Valley. Well water levels are dropping valley wide. Further industrial growth in Tooele, and growth of the Tooele population attendant to the creation and expansion of the two industrial zones to be served by the STR project would exacerbate water demand. The EA acknowledges, “The current U.S. Drought Monitor shows that 100 percent of Tooele County is in severe drought conditions and that 47 percent of the county is in extreme drought conditions.” (*See* EA, at 3-60). Pushing a massive industrial project that is likely to result in additional water consumption, in an area suffering from decades-long and likely worsening severe drought related to the climate crisis, is the epitome of short sightedness and reality denial.

Moreover, what will happen to the ground water that supplies those residences' wells, if an industrial chemical was to accidentally spill from a rail car. There are an average of 1,300 train derailments a year in the United States. Due to the proposed line's proximity to residential neighborhoods, the GSL and surrounding sensitive aquatic habitat, it will be essential for decision makers and stakeholders to understand the full range of potential impacts of leaks, spills, and derailments to the surrounding ecosystem. Petitioners are deeply concerned with the way the impacts of this project are being presented. While the report appears to show minimal environmental impact of this project, it doesn't tell the whole story. Rehabilitation and expansion of this short rail line will not occur in a vacuum. It will enable and support increased industrial development, warehousing and diesel traffic with resulting environmental and human impacts in an area already facing huge development pressure and water scarcity.

This rail-line will add further injury to the wetlands surrounding the GSL. The EPA recommended this Board should consider the cumulative effects of the development projects, both existing, and planned, surrounding the GSL.(See EI-32659).

The EA's water quality analysis identifies that the project will not impact the impaired Grantsville Reservoir because the Proposed Action site drains towards the GSL. For this very reason the EPA stated that a number of the voluntary mitigation measures for water quality will be important for avoiding adverse impacts to the GSL. The EPA recommended STR be required to obtain a Clean Water Act (CWA) Section 401 certification from the Utah Department of Environmental Quality as a condition of this Board's approval. (See EI-32659).

Ensuring that the project will not impact the GSL and its drainage area is invaluable to maintaining the overall health of the GSL and the aquatic environment in the vicinity of the project. The EPA recommended completion of the Section 404 consultation be a condition of this Board's

decision to ensure that the EA can support a FONSI. (*See* EI-32659). Building this line would harm wetlands critical to the survival of the GSL which is in imminent danger of collapse. Industrial development is hastening the disappearance of the GSL. When the dry lake bed dust is inhaled by millions of people the catastrophic health consequences of developments like the Savage Tooele Railroad will become even greater.

Impact on Wildlife

The obvious harm is first to wildlife habitat, either by loss of land area or from toxic storm water run-off. In the immediately adjacent areas, there is habitat identified by Utah's 2015 Wildlife Action Plan for sixteen of Utah Species of Greatest Conservation Need. These are species the state has prioritized for special attention because of the threats they face, and to stave off potential Endangered Species Act listings. In close proximity to the proposed rail line and the industrial development it will help induce, is habitat for white faced ibis, American white pelican, snowy plover, peregrine falcon, burrowing owl, greater sage grouse, bald eagle, ferruginous hawk, golden eagle, flammulated owl, caspian tern, Lewis's woodpecker and kit fox. Given that the GSL is on the verge of ecological collapse, protecting habitats for these species is all the more important as resources and habitats for wildlife are becoming more scarce. The stress on these species from habitat loss and degradation increase the potential for listings under the Endangered Species Act.

The City of Erda specifically expressed concern about the impact on red hawks nesting in the area. (*See* EI-33132) But other than looking for golden eagle habitat in the narrowly defined project area, the EA failed to examine what impacts might occur to the immediately adjacent landscape and the habitats for the species of greatest conservation need in and adjacent to the GSL.

Impact on Air Quality

The EA completely fails to disclose other sources of air pollution beyond the trucks and rail locomotives. Turning tens of thousands of acres of open space and grasslands into seas of asphalt and

concrete contributes to air pollution irrespective of the vehicles that travel on them because of the long term off-gassing of Volatile Organic Compounds (“VOCs”). The rail-line and vendors who utilize that line would also pollute the air in Tooele County which already violates EPA standards by incentivizing the building of massive warehouse farms all served by diesel semi trucks emitting far more particulate matter (“PM”) and nitrogen oxides (“NOx”) than is currently emitted in the county.

Through another path, water consumption secondary to this project will increase ozone formation. More water consumption will further deplete the size of the GSL. Among the many consequences of that trend (and addressed more later on) is an increase in solar reflectivity which is a catalyst for the formation of ozone.

As part of the Wasatch Front airshed, Tooele County is already in an area that chronically violates the EPA’s air quality standards (NAAQS) for both PM_{2.5} and ozone. And the new evidence will show that the EPA may raise the severity of the ozone level in the immediate future.

The EPA also recognized that the EA failed to take the required hard look at potential air quality impacts resulting from this project, because it failed to include information about the construction and operation of LBP and its indirect effects on air quality. This may include operational emissions from industries and businesses likely to utilize the park as well as additional vehicle traffic as a result of the this Decision. (*See* EI-32659).

The EA identifies hazardous air pollutants (“HAPs”) from operation of the rail to be small for Tooele County; however, we recommend that analyses be based on quantitative air modeling results compared to relevant health-based risk thresholds. For instance, the residence and businesses in Marshall may be exposed to greater and more significant concentrations of HAPs due to their immediate proximity to the rail line. Other nearby communities and residences may also see an

increase in HAPs compared to the County. Evaluating these exposures will be important for decision-making and the health of nearby communities.

Utah's ozone violations are getting worse. A recently published Salt Lake Tribune article reports that the EPA is likely to move Utah's non-attainment status for ozone pollution from "moderate" to "serious." It is also worth noting that the EPA's standards for ozone do not reflect the threats to public health as outlined in the majority of the medical literature.

Tooele County, where this rail line would be constructed and operated is in violation of a standard already set too low. Ozone is formed when heat and sunlight cause chemical reactions between NO_x and VOCs. Levels are often higher in the summertime because of sun exposure and higher temperatures. Ozone's health hazards are not only related to the lungs and respiratory disease, which are often the only health consequences mentioned in relation to ozone. Like PM, ozone causes systemic inflammation and body wide organ dysfunction. The list of diseases ozone is connected to is almost as extensive as those connected to PM. Air purifiers can capture much of the PM pollution, but unfortunately, not much of ozone pollution.

B. This Board Should Allow Petitioners to Introduce New Evidence

There is sufficient new evidence to support their position that the EA failed to provide an accurate report on the purpose of the rail-line and the consequences on the environment. Some of this evidence was either not publicly known or was not available at the time that public comments were due in this docket. For instance, there are documents outlining the connection between the UIPA Project Areas and the Savage Tooele Railway. Tooele County's original application to the UIPA Board reflects that the railway is a critical component of the inland port location. And the Tooele Valley Project Area Plan also illustrates how the railway and the creation of these industrial parks are wholly interrelated. There is evidence that a refrigeration company's decision to build a manufacturing site in the LBP was

contingent on railway. There is evidence of public outcry by Tooele Valley residents and the negative impacts on the City of Erda to the push for industrialization from developers, Savage Tooele Rail and the UIPA. There is also a recently published Salt Lake Tribune article discussing ozone levels worsening and getting reclassified. Moreover, because the connection between developers, certain local governments and the UIPA and STR and public discussion of the connection between the STR and these other entities was so frequent and was “common knowledge,” the petitioners did not realize it may be necessary to include this material in the record, and were surprised by OEA’s conclusion, which conflicts with the available evidence and proponent statements, that there was no connection.

Conclusion

For the foregoing reasons, Petitioners respectfully request this Board reconsider its Decision, allow Petitioners the opportunity to present this new evidence, and issue a stay of the effective date of its Decision pending reconsideration.

Respectfully submitted,
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Dated April 22, 2024

Certificate of Service

I certify that on April 22, 2024, I served copies of document upon all parties of record in this proceeding, by email to those that provided email service, and by U.S. Mail for those parties who have not provided an email address.

/s/ Janet M. Conway

Janet M. Conway