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395 E Street, SW

Washington, DC 20423

RE: Docket No. FD 36284, Seven County Infrastructure Coalition Application for Construction & Operation Exemption for Uinta Basin Railway, Finance Docket No. 36284

To the Board:

The Colorado Department of Natural Resources (CODNR) appreciates the opportunity to provide comment to the Surface Transportation Board (STB) as the board considers on remand the Seven County Infrastructure Coalition application for construction & operation exemption for Uinta Basin Railway. CODNR's mission is to develop, preserve, and enhance the state's natural resources for the benefit and enjoyment of current and future generations. To fulfill this mission, DNR's strategic priorities include focusing on enhancing biodiversity, balancing conservation with recreation, Tribal engagement, and ecosystem resiliency. The State, especially through the work of CODNR and its eight divisions, has heavily invested in Colorado's outdoors and natural resources which are reliant on clean air, water, and robust species habitat.

CODNR has concerns about the proposed Uinta Basin Railway and environmental impacts of the Seven County Infrastructure Coalition's proposal to construct and operate an approximately 88-mile rail line connecting the Uinta Basin to the national rail network. The proposed route and its connection to existing rail lines in Colorado would transport hundreds of thousands of barrels of waxy crude oil per day through Colorado. The project raises the risk of leaks, spills, or rail car accidents immediately adjacent to the headwaters of the Colorado River, the most critical water source for the state's residential communities, agricultural, outdoor recreation sectors, and wildlife species.

Coupled with the concerns of increased rail traffic along the Colorado River is also the lack of sufficient oversight, funding, and regulations to protect our state's valuable natural resources. The US Department of Transportation (DOT) announced in December 2025 the cancellation of approximately \$109 million in transportation grants awarded to Colorado, including planned rail safety improvement.¹ The CODNR is concerned that federal funding cuts already executed may make rail incidents and environmental releases of pollutants more likely.

¹ Paul, J. (2025, December 17). Trump administration cancels \$109M in environmentally focused transportation grants for Colorado. *The Colorado Sun*. <https://coloradosun.com/2025/12/16/trump-administration-cuts-transportation-grants-colorado/>

This past year, rail unions raised concerns over a recent proposal to roll back protection for federal inspectors and investigators that were put in place in 2021.² A recent train derailment and release of pollutants along the Gunnison River illustrate these sensitive ecosystems at risk.³

Colorado's outdoor recreation industry is rapidly expanding and continues to strengthen the state's overall economy. To provide context, the total economic output associated with outdoor recreation in Colorado amounts to \$65.8 billion and results in \$11.2 billion in local, state, and federal tax revenue annually while also providing an estimated 404,000 jobs.⁴ A core interest of CODNR is to ensure that projects with the potential to cause environmental harm are evaluated so that impacts to the environment are avoided, minimized, and mitigated to ensure the proper stewardship of our state's unique and precious natural resources.

We strongly urge the board to conduct additional environmental analysis to avoid, mitigate, and minimize impacts to the Colorado River and resident aquatic wildlife species. In the Final Environmental Impact Statement (FEIS), the downline impact from increased rail traffic as a result of the proposed railway are identified in Appendix C, *Downline Analysis Study Area and Train Characteristics*, in which the OEA identified regions that could be market for crude oil produced in the Basin and the routes that trains transporting crude oil could take from the Basin to those regions. Within its analysis, OEA made it clear that it was more likely for trains to continue east, than the west, and "All rail traffic moving from Kyune to destinations in the east would travel over the existing rail line between Kyune and Denver, Colorado."⁵ Therefore, it is reasonably foreseeable to expect that there will be an increase in rail traffic, specifically along the Colorado River, as a direct result of the proposed project making it a connected action that requires additional environmental analysis.

With the expected increase of rail traffic along the Colorado River, CODNR needs to understand how this specific project will change the status quo of the use of the rail line. The State values the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) consultation process as a means to gather information about the proposed project and its impacts to the state's natural resource assets. Without having a robust understanding of the environmental impacts to be expected when the proposed project fundamentally changes how the existing rail line is used, CODNR and its divisions do not have sufficient baseline information

² Gallagher, J. (2025, June 24). Rail unions warn DOT rollbacks could jeopardize train safety. *Freightwaves*. <https://www.freightwaves.com/news/rail-unions-warn-dot-rollbacks-could-jeopardize-train-safety>

³ Swanson, C. (2025, December 21). *Cleanup continues in Colorado after train derails into Gunnison River, spills over 8,000 gallons of fuel*. *Cbsnews.com*. <https://www.cbsnews.com/colorado/news/fuel-spill-cleanup-train-derails-gunnison-river-colorado/>

⁴ Southwick Associates. 2024. The 2023 Economic Contribution of Outdoor Recreation in Colorado.

⁵ Surface Transportation Board Office of Environmental Analysis. (2021). *Uinta Basin Railway Final Environmental Impact Statement: Volume II. STB Docket No. FD 36284*, 83.

to react to or plan for the inevitable. It is the purpose of federal environmental review processes to conduct and provide this information.

As outlined by our divisions in the following sections, Colorado Parks and Wildlife (CPW) and the Colorado Water Conservation Board (CWCB), we have concerns over the impacts to Colorado River aquatic species and ecosystems that we have invested heavily in through funding and staff time over the span of decades. Colorado's critical natural resources form the basis of Colorado's expanding outdoor recreation economy while safeguarding our local communities and agricultural industries that sustain their livelihoods along the Colorado River and any possible impacts to these resources must be thoroughly elevated by the board.

Colorado Parks and Wildlife

The mission of CPW is to perpetuate the wildlife resources of the state, to provide a quality state parks system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources. CPW has a statutory responsibility to manage all wildlife species in Colorado and to promote various recreational opportunities throughout the state. As the STB considers this matter on remand, CPW submits these comments to highlight the impacts that the Uinta Basin Railway would have on Colorado's wildlife resources and to urge the Board to develop supplemental environmental analyses on the Coalition's application for exemption. In reviewing the Board's previous approval decision, the D.C. Circuit Court of Appeals identified numerous flaws in the Board's analysis, several of which directly implicate Colorado's natural resources—and these findings remain valid after the Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County*. The Board must further review these issues as it considers the application on remand.

"States have important interests in regulating wildlife and other natural resources within their borders." *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999). In Colorado, that interest extends to the general health of aquatic ecosystems and fisheries, as well as conserving imperiled species like the federally- and state-listed Colorado pikeminnow, razorback sucker, humpback chub, and bonytail.⁶ In addition to protecting these species within the state, Colorado has invested significantly in their recovery as a party to the Upper Colorado River Endangered Fish Recovery Program. *See generally* Recovery Implementation Program for Threatened and Endangered Fish Species in the Upper Colorado River Basin, U.S. Fish & Wildlife

⁶ See § 33-2-102(1)(b), C.R.S. ("Species or subspecies of wildlife indigenous to this state that may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible."); 2 CCR 406-10:1002.A.1 (designating razorback sucker and bonytail endangered in Colorado); 2 CCR 406-10:1003.A.1 (designating Colorado pikeminnow and humpback chub threatened in Colorado).

Service (May 2025).⁷ The Board's environmental analysis of the Railway's impacts is insufficient and threatens to weaken the value of Colorado's investments in these protected fish and their habitat.

The D.C. Circuit vacated the biological opinion (BiOp), so FWS must issue a new BiOp before the Board can complete the remand. See *Eagle Cnty., Colorado v. Surface Transportation Bd.*, 82 F.4th 1152, 1196 (D.C. Cir. 2023), *rev'd on other grounds sub nom. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168 (2025). The BiOp should either (1) expand the action area and evaluate the effects of train accidents that release crude oil on the listed Colorado River fish (Colorado pikeminnow, razorback sucker, humpback chub, and bonytail) and their critical habitat or (2) explain why these effects are not reasonably certain to occur. If the Board revises its biological assessment (BA) on remand, it should do the same using the most recent accident data available.

A BiOp must, among other things, describe the action area and include "a detailed discussion of the effects of the action on listed species or critical habitat." *Endangered Species Act Section 7 Consultation Handbook*, U.S. Fish & Wildlife Service & National Marine Fisheries Service (1998) ("Handbook") at 4-15; 50 C.F.R. § 402.14(h)(iii). The "action area" includes "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action." 50 C.F.R. § 402.02. In its BiOp, FWS adopted the action area the Board proposed in its BA, including "[t]he area of the Upper Colorado River Basin affected by water depletions," but not the area affected by train accidents that release crude oil. BiOp at 13. Based on this understanding of the action area, FWS analyzed the effects of water depletions associated with the project on the listed Colorado River fish and their critical habitat, but not the effects of train accidents that release crude oil. See BiOp at 44-45. The D.C. Circuit found the BiOp flawed in both respects. See *Eagle Cnty.*, 82 F.4th at 1188 (concluding FWS's "adoption of the Board's proposed action area causes the BiOp itself to be flawed as a result" and stating FWS "never considered possible risks to protected species downline based on the Board's faulty reasoning and therefore did not fulfill its important function under the ESA").

Based on the Board's own environmental analyses to date, the Colorado River is likely to be impacted by the Railway. This area should thus be included in the new BiOp's "action area" so that FWS analyzes these impacts on the listed Colorado River fish and their critical habitat. Information in the Environmental Impact Statement (EIS) suggests the Railway may cause more train accidents that release crude oil in or near the Colorado River. For example, the EIS said the Railway would result in increased downline rail traffic, with the segment between Kyune, Utah and Denver, Colorado experiencing the greatest impacts. Much of this segment abuts the Colorado River. See *Eagle Cnty.*, 82 F.4th at 1185. On the Kyune to Denver segment, the EIS

⁷ Available here: https://coloradoriverrecovery.org/wp-content/uploads/2025/05/Aqua-Book-May-2025_x.pdf (last visited January 2, 2026).

predicted that accidents involving a loaded crude oil train would occur 0.89 times per year in a high rail traffic scenario and 0.31 times per year in a low rail traffic scenario. EIS, p. 3.2-6, 7. The EIS also predicted that “approximately a quarter of accidents involving loaded oil trains would result in a release of crude oil.” *Id.* This suggests the Board expects the Railway to cause at least one release of crude oil every five years in a high rail traffic scenario and every 13 years in a low traffic scenario.

Given that it can take years for fish populations and habitats to recover from catastrophic losses, this increased frequency of crude oil releases poses a significant risk that must be fully evaluated. The humpback chub, bonytail, Colorado pikeminnow, and razorback sucker are long-lived species that can live for several decades, with the bonytail living up to 50 years. While the Railway is adjacent to designated critical habitat for all four listed Colorado River species, and could adversely impact any of them, the humpback chub faces an increased risk due to the limited habitat available to this species. The only remaining population in Colorado is the Black Rocks population, which occupies a short, discrete river section along the Railway route. Humpback chubs do not spawn until they reach an age of 2-3 years, and older, larger females produce greater numbers of eggs. A revised BA and/or BiOp should analyze how the frequency of a spill and/or cleanup activities may alter this limited available habitat, and affect the size, genetic diversity, and reproductive potential of this population. A single spill could potentially extirpate this entire population and also adversely affect the downstream Westwater, Utah population. Impacts to these local populations could also have ripple effects for the health of the broader population. The 2021 reclassification of the species from endangered to threatened relied partly on the stability of Upper Basin (above Lake Powell) populations; spills or derailments threaten species population stability and could reduce redundancy.

The revised assessment of the Railway’s impacts on listed Colorado River fish and their critical habitat should update the Board’s prior analysis of how the increasing number of trains affects the specific risk of derailment or spills. The data the Board used to prepare this assessment in the EIS is at least five years old,⁸ so there could be additional data for the Board and FWS to consider. *See Indigenous Envtl. Network v. State*, 347 F. Supp. 3d 561, 582 (D. Mont. 2018) (vacated on other grounds) (faulting reliance on four-year old EIS analysis that did not analyze newer data). The analysis should also evaluate the full range of spill impacts, focusing not only on cargo spills of waxy crude but also impacts from locomotive diesel or hydraulic fluids leeching into the aquatic environment. Any analysis should also account for the remoteness of the Colorado River stretches. The lack of road access and the confined canyon geography could significantly delay response times and containment efforts.

⁸ EIS cited Federal Railroad Administration data reported in 2020 that looked at 2019 rail accidents. *See* EIS at 3.2-3.

The analysis should also realistically assess the unique challenges of a cleanup effort for the type of waxy crude that is likely to be transported from the Uinta Basin. While the EIS claims that this type of material is easier to clean up, there are at least two waxy crude clean-up efforts that should be analyzed – the 2015 Provo River spill⁹ and the 2010 Strawberry River discharge.¹⁰ Those experiences suggest that:

- (1) Even in colder temperatures when the waxy crude may solidify, cleanup is very labor-intensive, and therefore, the physical damage caused by the cleanup activities associated with a spill could cause severe acute harm to aquatic and riparian habitats;
- (2) At warmer temperatures, waxy crude becomes sticky and adheres to banks, riparian vegetation, and the river bottom in shallow areas or riffles; and
- (3) The solid chunks of waxy crude do not readily degrade over time like diesel and gasoline, and would slowly release hydrocarbons into the surrounding environment unless they are physically removed (which also could cause damage to habitats).

In sum, the Board needs a new BiOp from FWS before it can take further action on the remand of the Coalition's pending application. The Board should ensure the revised ESA analysis thoroughly assesses the impacts of increased derailments or spills of waxy crude oil on the listed Colorado River fish and their critical habitat. CPW is willing to work with both agencies to support such an effort.

Colorado Water Conservation Board

The Colorado Water Conservation Board (CWCB) respectfully submits these comments for consideration in the Uinta Basin Railway matter on remand. The CWCB is the state agency charged with the protection and development of the waters of the State of Colorado. It is governed by a 15-member board with responsibilities that include, among other things, protecting Colorado's interstate compact apportionments and collaborating with other states and federal agencies. Through its work and authorities, CWCB is an active partner and decision-maker in the Upper Colorado River Endangered Fish Recovery Program.

The Upper Colorado River Endangered Fish Recovery Program works in the Upper Colorado River basin above Glen Canyon Dam, which includes the Green River and Upper Colorado River subbasins, and excludes the San Juan River basin.¹¹ The Program is a successful

⁹ The Environmental Protection Agency's documentation of this spill is located here: https://response.epa.gov/site/site_profile.aspx?site_id=11315 (last visited January 5, 2026).

¹⁰ The Environmental Protection Agency's documentation of this discharge is located here: https://response.epa.gov/site/site_profile.aspx?site_id=6383 (last visited January 5, 2026).

¹¹ U.S. Fish and Wildlife Service, *Recovery Implementation Program for Threatened and Endangered Fish Species in the Upper Colorado River Basin* at 1 (Revised May 2025), https://coloradoriverrecovery.org/wp-content/uploads/2025/05/Aqua-Book-May-2025_x.pdf. The San Juan River is covered by the San Juan River Recovery Implementation Program. *See generally*, <https://coloradoriverrecovery.org/sj/> (last visited Jan. 6, 2026).

cooperative partnership among the States of Colorado, Utah, and Wyoming, and federal agencies within the Department of the Interior and Western Area Power Administration. For almost 40 years, the Upper Colorado Recovery Program has provided ESA compliance for approximately 2,227 municipal, agricultural, energy, and industrial water projects, covering over 2.87 million acre-feet of depletions in the Upper Colorado River Basin states, including all Bureau of Reclamation projects upstream of Lake Powell, while working to recover four threatened and endangered fish species.¹² The Upper Colorado Recovery Program serves as the reasonable and prudent alternative under Section 7 of the ESA and thereby provides ESA compliance for water projects and depletions covered by the Program. The Program has dual goals of equal importance: (1) allow water users to continue to develop water supplies apportioned under the Colorado River Compact and the Upper Colorado River Basin Compact, and (2) recover the four ESA-listed fish species in the Colorado River and its tributaries. Through the Upper Colorado Recovery Program, compliance with the ESA is expedited and simplified for projects and is achieved consistent with state water laws, interstate compacts ratified by Congress, and Bureau of Reclamation project authorizations and purposes.

The CWCB, with CPW, implements Upper Colorado Recovery Program actions within Colorado. Any additional or supplemental environmental analysis and/or Board decisions for the proposed Uinta Basin Railway project that pertain to the listed Colorado River fish and their critical habitat should not impair or impede the implementation and sufficiency of conservation actions provided by the Upper Colorado Recovery Program. Any such interference or impairment could erode the protections afforded to Colorado water users by the Program and impede the ability to use water apportioned to the state under interstate compacts.

Conclusion

We appreciate the opportunity to provide comments from our division staff who have on the ground knowledge of the resources that could be impacted as a part of the Uinta Basin Railway project. We strongly urge the board to conduct additional environmental analysis to avoid, mitigate, and minimize impacts to the Colorado River and resident aquatic wildlife species.

Sincerely,



Dan Gibbs

Executive Director, Colorado Department of Natural Resources

¹² See U.S. Fish and Wildlife Service, 2024 Assessment of Sufficient Progress for the Upper Colorado River Endangered Fish Recovery Program in the Upper Colorado River Basin (Sept. 8, 2025), <https://coloradoriverrecovery.org/uc/wp-content/uploads/sites/2/2025/09/2024-UCRRP-Sufficient-Progress-Memo-and-RAP-Assessment-Report.pdf>.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2026, I caused a copy of the foregoing document to be served by email or first-class mail, postage prepaid, on all parties of record in Finance Docket No. 36284.

/s/

Lacy Gentry

Lacy Gentry
Federal Affairs Policy Analyst
Colorado Department of Natural Resources
Dated January 12, 2026