

March 10, 2026

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

310965

t 202.344.4698
JCJohnson@Venable.com

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Office of Chief Counsel
March 10, 2026
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Public Record

Re: Finance Docket No. 36284, Seven County Infrastructure Coalition – Rail
Construction and Operation Exemption – In Utah, Carbon, Duchesne, and
Uintah Counties, Utah

Dear Chief:

In a supplemental authority letter dated March 5, 2026, the Center for Biological Diversity draws the Board's attention to a recent Ninth Circuit decision, *Center for Biological Diversity v. U.S. EPA*. That case, however, says nothing about the Endangered Species Act issue here: whether the portion of the Colorado River that parallels the Union Pacific rail line is within the ESA "action area" for the new Uinta Basin Railway, hundreds of miles away. Rather, the Ninth Circuit was talking about foreseeability as it related to certain "statutorily mandated ... recommendations which have nationwide consequences." *Id.*, slip op. at 32. A specific project with geographically limited effects, like this one, is a different case.

As the Supreme Court explained in the NEPA context, "but-for causation or mere foreseeability" are not enough to require "agency analysis." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 190 (2025); *see* Coalition Reply at 17–18. All the more so under the ESA's textually stricter "reasonably certain" standard. *See* Coalition Reply at 18–19. Any link between the Uinta Basin Railway and speculative spills along a different, distant rail line is too attenuated to support an expanded ESA action area. *See id.* at 19–21.

Sincerely,



Jay C. Johnson
Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that I have this day, March 10, 2026, served copies of the foregoing document on all parties of record in this proceeding by email.

/s/ Jay C. Johnson
Jay C. Johnson