



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

EO-3253

Office of Environmental Analysis

February 3, 2020

Nicole Fresard
US Army Corps of Engineers, Sacramento District
Bountiful Regulatory Office
533 West 2600 South, Suite 150
Bountiful, Utah 84010-7744
Email: Nicole.D.Fresard@usace.army.mil

RE: Docket No. FD 36284, Seven County Infrastructure Coalition—Construction & Operation Exemption—in Utah, Carbon, Duchesne, and Uintah Counties, Utah

Dear Ms. Fresard:

I am responding to your December 3, 2019 letter regarding the above-referenced proceeding, in which the Seven County Infrastructure Coalition (Coalition) plans to seek authority from the Surface Transportation Board (Board) to construct and operate a new line of railroad in northeastern Utah. As you are aware, the Board's Office of Environmental Analysis (OEA) is currently preparing an Environmental Impact Statement (EIS) for the Coalition's proposed rail line, with the assistance of the U.S. Army Corps of Engineers (Corps) and other cooperating agencies, pursuant to the National Environmental Policy Act (NEPA) and related laws and regulations.

In response to your request relating to the purpose and need statement for this project, Josh Wayland of my staff provided you with a draft letter on October 23, 2019 (Oct 2019 draft letter)(enclosed), with the language from the "*Purpose and Need*," section of the Notice of Intent (NOI) to Prepare an EIS issued on June 19, 2019.¹ Consistent with the Board's regulations, practices, and legal precedent providing that the statement is to be informed by the applicant's goals and the Board's governing statute, the NOI set forth the applicant's objectives² and the agency's statutory authorization.

Your December 3, 2019 letter in response identifies two concerns regarding the purpose and need statement. First, you suggest deleting the phrase "using a route that would allow the

¹ Seven County Infrastructure Coalition—Rail Construction & Operation—in Utah, Carbon, Duchesne, and Uintah Counties, Utah, 84 Fed. Reg. 28,611 (June 19, 2019).

² The applicant's purpose and need is also set forth in the Coalition's February 20, 2019 information paper, publicly available on the Board's website at www.stb.gov, and the Board-sponsored project website at www.UintaBasinRailwayEIS.com

Coalition to attract shippers with a cost-effective rail alternative to trucking.” With your suggested deletion, it would read: “the purpose of the proposed route is to provide common-carrier rail service connecting the Uinta Basin in northeastern Utah to the interstate common-carrier rail network.” You reason that the phrase you suggest be deleted could be used as a screening criterion to meet the purpose and need or other aspects of practicability for analysis under the NEPA or Section 404 of the Clean Water Act analysis and is not necessary in the purpose statement for the project.

We respectfully disagree with your suggested deletion of this language from the purpose and need statement. At present, trucking provides the only means of freight transportation into and out of the Uinta Basin. Providing an alternative means of transportation is central to the Coalition’s aims, as made clear in numerous statements made by the Coalition, including the February 20, 2019 information paper. Moreover, in order for a new transportation option to be introduced in the Uinta Basin, such an option must present a viable alternative to trucking, which in turn would require that the rail line provide a cost-effective transportation option that would attract customers to rail. Ultimately, if the Board were to approve a route that did not meet this basic requirement, there would be no reason to construct the rail line and the Coalition would be unable to obtain financing for the rail line.

The Board has the duty to consider the applicant’s purpose and the objectives of the applicant’s project in addition to the agency’s enabling statute.³ We recognize that under NEPA an applicant may not define the project’s purpose so narrowly as to preclude the existence of any reasonable and feasible alternative to its proposed action.⁴ However, when an applicant’s stated purpose is “genuine and legitimate,” as is the case here, it would be inappropriate, and contrary to well-settled court precedent, to reject an applicant’s stated purpose or to substitute a different purpose.⁵

The second concern raised in your December 3, 2019 letter pertains to the level of detail regarding the purpose and need provided in the Oct 2019 draft letter. I am happy to provide the requested additional detail. The following language that was included in the *Purpose and Need* section of the NOI may be useful to you:

Because the Uinta Basin is surrounded by high mountains and plateaus, the area has limited transportation options at present. Currently, all freight moving into and out of the basin is transported by trucks on the area’s limited road network, which includes one north-south two-lane highway (U.S. Highway 191) and one east west

³ See *Alaska Survival v. STB*, 705 F.3d 1073, 1084-85 (9th Cir., 2013); *Nat’l Parks and Conservation Ass’n v. BLM*, 606 F.3d 1058, 1070 (9th Cir. 2009); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991); *Sylvester v. U.S. Army Corps of Eng’rs*, 882 F.2d 407, 409 (9th Cir. 1989).

⁴ *Friends of the Santa Clara River v. U.S. Army Corps of Eng’rs*, 887 F.3d 906, 912(9th Cir. 2018).

⁵ See *Friends of the Santa Clara River*, 887 F.3d at 912; *La. Wildlife Fed’n v. York*, 761 F.2d 1044, 1048 (5th Cir. 1985). Accord *Alaska Survival*, 705 F.3d at 1084; *Citizens Against Burlington*, 938 F.2d at 199.

two-lane highway (U.S. Highway 40). The proposed project would provide a new, cost effective surface transportation option for shippers seeking to transport products and commodities into and out of the Uinta Basin.

In addition, the following language, from the Coalition's February 20, 2019 information paper, further supports the project's purpose and need:

The Uinta Basin contains extensive deposits of economically valuable minerals, including large deposits of soda ash and phosphate. Also found within the region are substantial deposits of crude oil, natural gas, oil shale, oil sands, gilsonite, natural asphalt, limestone, bentonite, heavy clay, aggregate materials, bauxite, and low-sulfur coal. Agriculture is also an important part of the Uinta Basin's economy and includes cattle, alfalfa, corn, and other field crops. The Uinta Basin is bounded on all sides by high mountains or plateaus and has limited access by all transportation modes. There is no freeway in or out of the Uinta Basin. There is one east-west paved highway (U.S. Highway 40) and one north-south paved highway (U.S. Highway 191), both of which are two-lane highways except for infrequent passing lanes. Exiting the Basin, these highways cross high mountain passes that during the winter months are prone to closure from snow and ice. The mixture of heavy truck traffic and passenger cars is a safety issue, especially during winter and inclement conditions.

Because the Uinta Basin is not served by the national railway network, trucking on the area's limited highway network is the only available mode of surface transportation for the goods and commodities produced or consumed in the Uinta Basin. Trucks, as compared to rail, are less cost-effective for heavy and bulk commodity movements and generally are used for short-haul movements of these commodities. By providing direct rail service to the Uinta Basin, the proposed project would:

- provide customers in the Uinta Basin with multi-modal options for the movement of freight to and from Uinta Basin;
- promote a safe and efficient system of freight transportation in and out of the Uinta Basin;
- further the development of a sound rail transportation system with effective competition among differing modes of transportation; and
- foster sound economic conditions in transportation and effective competition and coordination between differing modes of transportation.

Because direct rail service is a cost-effective transportation option, many heavy and bulk commodity movements to and from the Uinta Basin would transport by rail, if such an option were available. The proposed project also would provide needed job opportunities for those that reside within or near the Basin.

We would like to schedule a conference call with Mr. Jason Gipson (cc'd on this letter) and you this Thursday, Feb. 6, 2020, at 11am Mountain, 1pm Eastern. We value the Corps' role as a cooperating agency on the EIS for this infrastructure project and would like to discuss with you the next steps in the process.

I hope the information in this letter is helpful. Thank you for your continued participation in the Board's environmental review process. If you have questions or concerns, please feel free to contact Dr. Wayland, the project manager for the EIS in this proceeding, by email at joshua.wayland@stb.gov or by phone at (202) 245-0330.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Director
Office of Environmental Analysis

Enclosure

Cc: Jason Gipson, USACE Branch Chief,
Sacramento



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

[DATE]

[Contact Name]

[Address]

RE: Docket No. FD 36284, Seven County Infrastructure Coalition—Construction & Operation Exemption—in Utah, Carbon, Duchesne, and Uintah Counties, Utah

Dear Cooperating Agency:

The Seven County Infrastructure Coalition (Coalition), a political entity comprising the counties of Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah in Utah, intends to file a petition or application with the Surface Transportation Board (Board) to construct and operate a new line of railroad connecting the Uinta Basin in northwest Utah to the interstate rail network. The Board's Office of Environmental Analysis (OEA) has determined that construction and operation of the proposed rail line has the potential to significantly impact the quality of the human environment and on June 19, 2019 issued a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act.

The following federal and state agencies have accepted OEA's invitation to participate in the EIS process as Cooperating Agencies, pursuant to Council on Environmental Quality regulations at 40 C.F.R. § 1501.6:

- Department of the Interior, Bureau of Land Management;
- Department of Agriculture, U.S. Forest Service;
- Department of the Interior, Bureau of Indian Affairs;
- Department of the Army, U.S. Army Corps of Engineers; and
- Utah Public Lands Policy Coordinating Office.

At the request of the U.S. Army Corps of Engineers, OEA is providing this letter to all the Cooperating Agencies to document the Purpose and Need for the proposed rail line. The proposed project involves a request from the Coalition for Board authority to construct and operate a common carrier rail line as part of the interstate rail network. The proposed rail line is not a federal government-proposed or sponsored project. Thus, the project's purpose and need is informed by both the governing statute of the lead federal agency and the goals of the applicant.¹

Under the Board's enabling statute—the Interstate Commerce Act as amended by the ICC Termination Act—construction and operation of new rail lines require prior authorization by the Board under 49 U.S.C § 10901(c), which is a permissive licensing standard. It directs the Board to grant construction proposals “unless” the Board finds the proposal “inconsistent with the public convenience and necessity.”² Thus, Congress presumes that rail construction projects are in the public interest unless shown otherwise.³

As indicated in the NOI, the Coalition has stated that the purpose of the proposed rail line is to “provide common-carrier rail service connecting the Uinta Basin in northeastern Utah to the interstate common-carrier rail network using a route that would allow the Coalition to attract shippers with a cost-effective rail alternative to trucking.” In an information paper submitted to OEA on February 20, 2019,⁴ the Coalition further states that, by providing direct rail service to the Uinta Basin, the proposed rail line would provide customers in the Uinta Basin with multi-modal options for the movement of freight to and from the Uinta Basin; promote a safe and efficient system of freight transportation in and out of the Uinta Basin; further the development of a sound rail transportation system with effective competition among differing modes of

¹ See Alaska Survival v. STB, 705 F.3d 1073, 1084-85 (9th Cir. 2013).

² Although the statute does not define the term public convenience and necessity, historically, a three-part test has been used to evaluate that term: whether an applicant is financially fit to undertake proposed construction and provide the proposed service; whether there is public demand or need for the proposed service; and whether the proposal is in the public interest and will not unduly harm existing services.

³ See N. Plains Res. Council v. STB, 668 F.3d 1067, 1091-92 (9th Cir.2011); Mid States Coalition for Progress v. STB, 345 F.3d 520, 552 (8th Cir. 2003); Alaska R.R. - Constr. and Operation Exemption – Rail line Between North Pole and Delta Junction, Alaska, FD 34658, slip op. at 5 (STB served January 5, 2010).

⁴ The information paper is available on the Board's website at www.stb.gov and the Board-sponsored project website at www.uintabasinrailwayeis.com.

transportation; and foster sound economic conditions in transportation and effective competition and coordination between differing modes of transportation.

OEA notes that the project's purpose and need does not specify a particular route or a particular point of connection to the interstate rail network. The purpose and need does, however, require that the selected route be able to provide common-carrier rail service to connect to the interstate common-carrier rail network and that the selected route allow the Coalition to provide rail service that is cost-effective relative to trucking. Currently, because the Uinta Basin is surrounded by high mountains and plateaus that limit the feasibility of transportation infrastructure, trucking is the only transportation mode available to freight shippers in the Uinta Basin.

I would like to thank you for your continued participation in the Board's environmental review of the Coalition's proposed rail line. If you have questions or concerns, please do not hesitate to contact Josh Wayland of my staff at (202) 245-0330 or joshua.wayland@stb.gov.

Sincerely,

Victoria Rutson
Director
Office of Environmental Analysis