



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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AUG 01 2019

Ref: 8ORA-N

Joshua Wayland
Surface Transportation Board
c/o ICF
9300 Lee Highway
Fairfax, VA 22031
Attn: Environmental filing,
Docket No. FD 36284

Dear Mr. Whalen:

The U.S. Environmental Protection Agency Region 8 has reviewed the Surface Transportation Board's June 19, 2019, notice of intent (NOI) for the EIS that is being prepared for the proposed Uinta Basin Railway Project in Utah, Carbon, Duchesne and Uinta Counties, Utah and Moffat and Rio Blanco Counties, Colorado. The following comments were prepared in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and in anticipation of our review of the EIS under Section 309 of the Clean Air Act.

We recommend STB include the following topics in the scope of analysis in the Draft EIS:

- Ensuring the EIS includes the analysis necessary to support CWA Section 404 permitting;
- Impacts to Waters of the U.S. (WOTUS), including Wetlands and Section 404 permits under the Clean Water Act;
- Impacts water resources, including water quality, riparian habitat, stream morphology and surface water and groundwater movement, as well as any National Pollutant Discharge Elimination System (NPDES) permits needed (Section 402 of the Clean Water Act);
- Impacts to air quality; and
- Impacts to environmental justice communities;

Consistency with NEPA and Clean Water Act Permit Requirements

Purpose and Need

For purposes of complying with both the Clean Water Act (CWA) and National Environmental Policy Act (NEPA), the EPA recommends that the purpose and need statement remain broad enough to encompass an appropriate range of both "reasonable" and "practicable" alternatives to meet the basic (i.e., underlying) project purpose, including the proposed action and other transportation methods available. We recommend defining a purpose and need statement broad enough to allow for analysis of a range of alternatives without eliminating less environmentally damaging alternatives that may still be considered practicable under the CWA Section 404 implementing regulations. Developing an agency-

coordinated purpose and need statement is critical prior to establishing subsequent screening criteria or identification of alternatives.

When creating the purpose and need statement for this project, we recommend that the NEPA document describe the transportation needs and the reasoning behind the need. Important considerations include logical termini and available methods of transporting freight. Overall, we are concerned that the use of a narrow project purpose to determine the scope of studies has the potential to result in the need to prepare additional NEPA documentation to meet NEPA and CWA Section 404 requirements. The Corps of Engineers and EPA both have roles in Section 404, and consistent with the E.O. 13807 we recommend STB coordinate to ensure this EIS is sufficient for related federal permit decisions.

Range of Alternatives

The EPA recommends that the NEPA document evaluate a range of reasonable and practicable alternatives, including multiple alignments. Currently it appears that a single alignment is proposed for the eastern portion of the project. Consideration should be given to whether alternate alignments for this segment may be practicable and available to the project proponent.

Under CWA Section 404 regulations, the U.S. Army Corps of Engineers (Corps) can only issue a permit for a discharge of fill material into waters of the U.S. if it can be demonstrated that the project is the least environmentally damaging practicable alternative (LEDPA). Practicable alternatives depend on cost, technical and logistical factors and must be capable of achieving the basic project purpose. For an alternative to be practicable, it must be reasonably available or obtainable and may include consideration of options beyond the authority of the lead agency. To assure that the project is permissible, it is essential that the NEPA document includes a full range of alternatives with the goal of avoiding and minimizing the impacts to waters of the U.S. while meeting the purpose of the action.

It is important that the NEPA document summarizes criteria used to screen reasonable alternatives, including the CWA regulatory criteria used to develop practicable alternatives, and consideration be given to environmental, logistical, technological and cost criteria. Providing details of the reasoning used to eliminate alternatives is helpful in understanding the decision process. As required by regulation, the rationale must be consistent with the practicability definition and criteria outlined in the preamble language of the CWA 404(b)(1) Guidelines (40 CFR § 230.10). The lead agency should ensure that any selected or preferred alternative is consistent with these criteria and demonstrate that such alternative is the least environmentally damaging practicable alternative. EPA and the Corps have experience to assist STB in ensuring consistency with the 404(b)(1) Guidelines.

WOTUS and Water Quality

Analysis/Resource Considerations

Affected Environment and Baseline Conditions

Please consider the following when defining baseline conditions:

- Verify that any historical data (e.g., data 5 years or older) are representative of current conditions.

- Include resources directly impacted by the project footprint within the geographic scope of analysis, as well as the resources indirectly (or secondarily) impacted by the project. These indirectly impacted areas may include adjacent or downstream waters, and any other resource areas which may be affected by project construction or operation.
- We recommend that the existing environmental baseline be used as the basis for comparison of impacts across all alternatives, including the no-action alternative. In the EPA's experience, comparison of the action alternatives to existing conditions is an important frame of reference to quantify and/or characterize the magnitude of effects and understand each alternative's impacts.

Direct, Indirect and Cumulative Effects

Because NEPA and CWA Section 404 have slightly different definitions for indirect (secondary) and cumulative impacts, identify in the document which statute is being employed to evaluate the impacts and how the analysis would differ under the other statute's definition.

We suggest analyzing impacts according to airsheds and watersheds rather than political boundaries.

It is important that the NEPA document examine the direct, indirect, and cumulative impacts to the environmental, cultural, and recreational resource characteristics of the project area. This may include impacts to threatened, endangered and/or sensitive species and their habitat; fish and invertebrate assemblages; water quality, and other resources within the geographic scope of analysis.

Cumulative impacts associated with ancillary facilities and other factors related to the project that could affect the aquatic resources are important to evaluate. In determining whether a project may have a significant effect on the environment, analyze the direct and indirect effects of all alternatives, in combination with past, present, and reasonably foreseeable future activities. For the cumulative effects analysis, consider the effects of reasonably foreseeable growth in the area and its effects on the hydrology and aquatic resources. Finally, the project may not affect the location of the expected growth, but it may affect the timing and amount of growth. Therefore, an analysis of the indirect impacts of development is recommended.

Waters of the U.S.

To illustrate effects to waters of the U.S., including wetlands, in the area we recommend that the NEPA document include the following analyses or descriptions:

- Description of impacts under individual or nationwide permits authorizing the discharge of fill or dredge materials to waters of the U.S.;
- Clear maps, including wetland delineation and regional water features;
- Wetland delineation and descriptions, including wetlands function analysis if there is any potential that the project will cause impacts;
- Analysis of the direct, indirect, and cumulative impacts to all stream and wetlands in the geographic scope, including impacts from changes in hydrology even if these wetlands are spatially removed from the construction footprint. Also include in the analysis the cumulative impacts to waters of the U.S. from future development scenarios;

- Consideration of minimization measures that could reduce adverse effects associated with alternatives; and
- A description of mitigation measures for any unavoidable adverse impacts to waters of the U.S.

Compliance with Executive Order 11990 Protection of Wetlands

The EPA recommends that the NEPA document demonstrates that all wetlands, including both jurisdictional and those found to be non-jurisdictional, are being protected on federal land as outlined in EO 11990. It is the lead agency's responsibility to comply with EO 11990. This would involve mapping all wetlands within the project site, including springs, and assuring all avoidance measures are incorporated into the project. If non-jurisdictional wetlands on federal lands are going to be impacted, offsetting mitigation efforts will need to be incorporated by the lead agency.

Riparian Habitat, Stream Morphology and Surface Water and Groundwater Movement

Railroad beds can act as dams changing surface water and shallow groundwater flow pathways which can affect wetlands and riparian habitat. In areas of shallow groundwater, less groundwater may reach downgradient creeks, wetlands and gullies and surface water flow can become more concentrated discharging only through culverts and bridges constructed for the railroad. Similarly, the riparian habitat can be separated from upland habitat by the railroad bed. For portions of the alternatives, the railroad bed could narrow stream valleys changing and constricting the geomorphology of streams and potentially the floodplain. We recommend assessing and disclosing these impacts as site-specifically as possible for the alternatives to assist in assessing the least environmentally damaging practicable alternative.

Construction Stormwater

It is likely that the proposed project will need to obtain NPDES stormwater construction permits under Section 402 of the Clean Water Act. Depending on the location of the alternatives, the proposed project would need to obtain stormwater construction permits from the EPA for portions of the project in Indian country, and from the States of Utah and Colorado for the portions of the project located in areas under their jurisdiction. The environmental analysis should also include the loading and offloading areas. Depending on the amount of crude oil that could be shipped out, some of the oil transloading facilities on the Fort Berthold Reservation could be used as an example for designs that minimize impacts from spills and stormwater runoff.

Clean Water Act § 401 Certifications

Depending on the final alignment the applicant may need to obtain a Clean Water Act Section 401 water quality certification for any federal permits that may result in a discharge to a WOTUS, including both Section 402 permits and Section 404 permits. Such certifications are issued by states when the discharge originates in an area of state jurisdiction, and by EPA or a Tribe when the discharge originates in Indian country. We recommend that the applicant coordinate with the State(s), Tribes and EPA throughout the §402 and §404 permitting processes.

Air Quality

The Uinta basin is a nonattainment area for the 2015 8-hour ozone standard. There is a substantial amount of existing air quality analysis including the Utah Air Resource Management Strategy (ARMS) modeling platform prepared for and modified for use in EISs for oil and gas development in the area. These air quality documents will also be useful in assessing cumulative impacts and potential indirect impacts from induced oil and gas development.

For the portions of the project that occur within the nonattainment area an evaluation of applicability of the Clean Air Act's General Conformity and Transportation Conformity requirements will be necessary. The EPA has assisted other federal agencies in understanding the aspects of Conformity requirements and are available to discuss these requirements for this project if that would be helpful.

For additional detail, we are enclosing our May 14, 2019 air quality pre-scoping letter. We appreciate that the Federal Register notice included consideration of air quality impacts analyses and greenhouse gas emissions. We also appreciate the consideration of analyses for construction impacts on air quality. The enclosed detailed comments reiterate our specific recommendations for the analyses and should continue to be a useful resource as the Draft EIS is developed.

Environmental Justice and Community Impacts Concerns

Three of the census blocks around Myton, Utah indicate there may be potential Environmental Justice communities that could be adversely affected by the proposed project. For communities, including Environmental Justice communities, impacts from noise, vibration, dust and other air emissions during both construction and operation should be considered. Similarly, there may be impacts from a new rail line to traffic, emergency response times, neighborhood connectivity, etc. that could warrant analysis in the EIS.

Closing

We appreciate your consideration of our comments at this early stage of the process. These comments are intended to help ensure a thorough assessment of the project's environmental impacts, adequate public disclosure, and an informed decision-making process. If further explanation of our comments is desired, please contact me at (303) 312-6500 hubner.matt@epa.gov or my supervisor Philip Strobel at (303) 312-6704 strobel.philip@epa.gov.

Sincerely,



Matt Hubner
NEPA Branch

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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May 14, 2019

Ref: 8ORA-N

Joshua Wayland
Surface Transportation Board
c/o ICF
9300 Lee Highway
Fairfax, VA 22031
Joshua.Wayland@stb.gov

Dear Mr. Wayland:

This letter outlines the Environmental Protection Agency Region 8's recommendations for developing an air quality analysis for the proposed new Uinta Basin railroad. We are sending these comments early in the NEPA process to improve efficiencies in developing the air quality analysis and technical reports for the EIS; especially in Uinta Basin ozone standard non-attainment area. The information should also be used for assessing air quality impacts in near the rail line and termini. Several communities, including potential environmental justice communities, are located along the proposed Railroad alternatives. These comments are in addition to our comment letter sent to on May 9, 2019 in response to the Surface Transportation Boards letter of April 10, 2019.

Initial Recommendations Air Quality Analysis for Uinta Basin Railroad

- I. Alternatives – Discuss and identify activities and air pollution sources from construction and operation of the rail line. Include any differences in impacts associated with the alternatives. Include enough detail of the rail termini to determine the level and type of activity at the termini in the Uinta Basin, including whether there will be several termini. For example, frequently there are separate termini for unloading fracking sand and loading oil shipments. Also identify locations for turnouts where trains may be idling for extended periods of time.
- II. Disclose existing conditions for air quality
 - a. Criteria pollutant background concentrations based on existing monitoring data.
 - i. Include discussion of current ozone nonattainment in the Uinta Basin.
 - b. Air Quality Related Values – trends at Class I areas and any Class II areas with sensitive resources
 - i. Visibility
 - ii. Nitrogen and sulfur deposition
 - iii. Current conditions for lakes – Acid Neutralizing Capacity
 - c. Any available monitoring information for air toxics/hazardous air pollutants (HAPs)
- III. Analysis of impacts
 - a. Calculate emissions from the construction and operation of the railway.

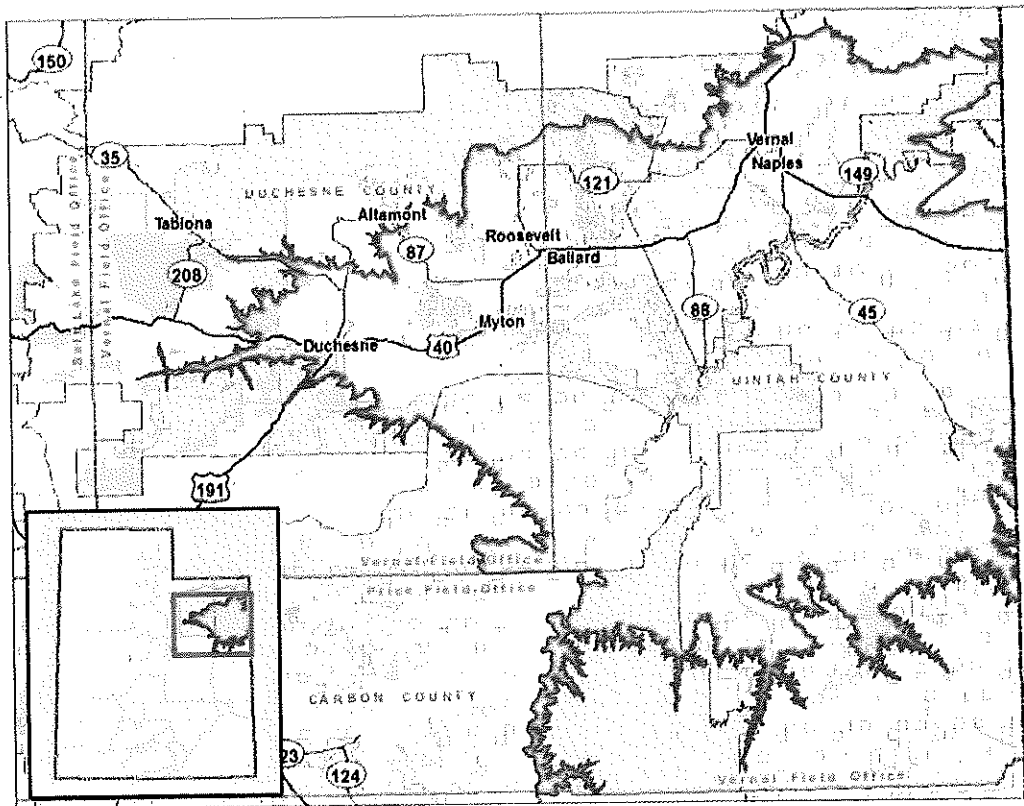
- i. Criteria Pollutants
- ii. HAPs
- iii. GHGs
- b. Identify any sensitive receptors (such as residences) that are proximal to proposed routes.
 - i. Based on emissions inventory and proximity, is a quantitative analysis warranted for any portion of the rail line?
 - ii. If there will be a rail yard at the terminus do emission levels or the presence of receptors warrant a quantitative analysis?
 - iii. We recommend consulting with EPA once emissions have been estimated and receptors have been identified to discuss if additional air quality analysis would improve the disclosure of air quality impacts.
- c. Far-Field impacts
 - i. Do emissions warrant quantitative analysis?
 - ii. If not, qualitative analysis.
 - iii. AQRVs – qualitative or quantitative based on emissions.
 - iv. We recommend consulting with EPA once emissions have been estimated to assist in determining an approach for the far-field analysis.
- d. Cumulative impacts
 - i. Discuss UT Air Resource Management Strategy modeling platform and modified version used for EISs in the basin. Discuss limitations and uncertainty and difficulty in modeling winter ozone.
 - ii. Calculate downstream emissions from fossil fuel combustion transported by railway.
 - iii. Estimate emissions reduction from reduced trucking.

IV. General Conformity in the Uinta Basin, Utah Ozone Nonattainment Area

- a. By the maps provided by the federal Surface Transportation Board's letter of April 10, 2019, it appears that a portion of any of the three rail line alternatives being considered would pass through part of the Uinta Basin 2015 8-hour Ozone nonattainment area (NAA). Therefore, for those portions of the rail project that would be located within the boundaries of Uinta Basin ozone NAA, the provisions of the EPA's General Conformity rule would need to be addressed. The General Conformity rule requires that for federal actions in the Uinta Basin, a general conformity analysis and/or conformity determination must be completed by the applicable federal agency prior to authorizing the proposed action.

General conformity (ref. CAA section 176(c) and 40 CFR 93, Subpart B; sections 93.150 to 93.165)) applies to federal actions in nonattainment and maintenance areas to ensure that the actions conducted or sponsored by federal agencies are consistent with state/tribal/federal air quality plans established to protect human health and the environment. This means that emissions of air pollutants from planned federal activities do not: cause new violations of the NAAQS; increase the frequency or severity of NAAQS violations; or delay timely attainment of the NAAQS or any interim milestone. We note that general conformity applies in marginal or higher ozone nonattainment areas beginning one year after the effective date of designation (August 3, 2019 for the Uinta Basin 2015 8-hour Ozone NAA

For reference, the figure below depicts the Uinta Basin's 2015 8-hour ozone NAA (areas within the purple boundary.)



If you have any questions or comments regarding NEPA air quality analysis, please to contact me at (303) 312-6870, allen.dana@epa.gov; or Christopher Razzazian (303) 312-6648, razzazian.christopher@epa.gov.

Sincerely,

Dana B. Allen

Dana Allen
NEPA Branch

