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August 2, 2019

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Vernal, UT 84078

Re: Seven County Infrastructure Coalition Application for Uinta Basin Railway
Docket No. FD 36284

Dear Mr. Wayland:

TransWest Express LLC (TransWest) provides the following comments in response to the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) published in the *Federal Register* on June 19, 2019, for the Seven County Infrastructure Coalition (Coalition), Uinta Basin Railway Project (Railway) (Docket No. FD 36284).

We appreciate the opportunity to comment on a substantial infrastructure project that is reported to offer important new economic opportunities to the region. According to an article in the July 28, 2019, *Uintah Basin Standard* newspaper, “There’s no question that the oil and gas industry stands to benefit from a rail line connecting the Uinta Basin with the U.S. interstate rail system. ...Railroads are more cost-efficient than any other over-land transportation.” Therefore, assuring the comprehensive preparation of robust federal environmental analysis can help provide a solid foundation upon which the Railway may proceed.

The NOI states that the Coalition plans to file a request with the Surface Transportation Board (STB) for authority to construct and operate an approximately 80-mile rail line between two

terminus points in the Uintah Basin near Myton, Utah, and Leland Bench, Utah, and the interstate rail network. The STB has determined that an Environmental Impact Statement (EIS) is required since construction and operation of the rail line has the potential to result in significant environmental impacts. The three alternatives are:

- Two routes generally extending southwest from the terminus point near Myton and Leland Bench, Utah, to a connection point with an existing rail line near Kyune, Utah, referred to as the Indian Canyon Route (applicant preferred route), and the Wells Draw Route.
- One route generally extending eastward from Myton/Leland Bench to a terminus near Craig, Colorado (Craig Route).

According to the NOI, the proposed action involves a request from the Coalition for STB authority to construct and operate the proposed rail line. Cooperating agencies were invited to participate in the EIS process on the basis of their special expertise or jurisdiction by law. Significantly, these agencies include the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (Forest Service), which have land management authority over vast areas of the proposed Railway. It is not clear from the NOI whether the Coalition has filed Applications for Transportation and Utility Systems and Facilities on Federal Lands (SF299) with BLM and the Forest Service. Upon the filing of such an application, BLM then has an obligation under 43 CFR 2807.14 to notify all right-of-way (ROW) holders that have land subject to the application or near or adjacent to the application area. Furthermore, the regulation requires BLM to consider written recommendations as to how the proposed use affects the integrity of, or the ability to operate, facilities approved under a prior ROW grant.

The TransWest Express Transmission Project has a BLM ROW grant in the Railway area

TransWest is developing the TransWest Express Transmission Project (TWE Project), an approximately 730-mile transmission system extending from Carbon County, Wyoming, to Boulder City, Nevada. It is designed to strengthen the Western U.S. power grid and facilitate the delivery of renewable energy around the region. Because approximately two-thirds of the TWE Project route is sited on federal land managed by BLM, the BLM and Western Area Power Administration (WAPA), serving as joint lead federal agencies, determined the Project's route based on an extensive environmental analysis conducted under the National Environmental Policy Act (NEPA). After completing more than six years of environmental analysis, BLM and WAPA issued a 2,500-page Final EIS on May 1, 2015, followed by Records of Decision (RODs) approving the TWE Project on December 13, 2016, and January 17, 2017, respectively. A BLM ROW grant establishing the TWE Project's route across federal land was issued on June 23, 2017. TransWest's ROW Grant has been assigned Serial Numbers WYW-177893 (lead file), COC-72929 and UTU-87238.

Federal lands administered by the BLM and crossed by the TWE Project for which TransWest holds a ROW Grant include public lands in the Little Snake, White River and Vernal Field Offices. These lands may also be subject to the Coalition's application for a ROW grant for the Railway. Based upon maps available at the scoping meetings, there appear to be at least seven instances where the proposed Railway crosses the approved TWE Project ROW grant.

Furthermore, it appears that there are sections of the proposed Railway that are entirely within the approved TWE Project ROW grant.

To the extent the Coalition's application conflicts with TransWest's approved ROW Grant for the TWE Project, then the Coalition's proposed use will adversely affect the integrity of, or TransWest's ability to operate, the TWE Project facilities. TransWest would assent to the issuance of a BLM ROW grant for the Railway conditioned upon a requirement that the Railway coordinate with TransWest to assure all potential engineering, siting and operational concerns are addressed to assure the proper and safe construction and operation of the TWE Project.

Railway scoping process did not provide adequate information to the public

TransWest representatives attended the Vernal and Salt Lake City scoping meetings held by the STB for the Railway. At the July 18, 2019, scoping meeting in Vernal, a TransWest representative inquired about the availability of meeting materials and electronic versions of the proposed action alternative routes (e.g. GIS or KMZ files). He was informed by a contractor representing the STB that the files would be posted to the STB website that evening or the next day. When the information was not posted to the website by the following week, TransWest was informed that the STB reversed its decision to post the information.

In an effort to provide well-informed scoping comments, TransWest formally requested the information via email on July 24, 2019, to the STB contractor, who represents that the request was forwarded to STB. To date, the STB has not responded to that reasonable information request. TransWest once again requests that the STB and BLM post the scoping meeting materials and route shapefiles to the project website to better inform the public and to provide transparency in the EIS process. By making the GIS or KMZ files of the routes available to the public, the STB and BLM are likely to receive more informed, higher-quality, site-specific scoping comments. In the past, the BLM has made such information available to the public, so there is precedent. Indeed, the very purpose of NEPA is to ensure that information on the environmental impacts of any Federal, or federally funded, action is available to public officials and citizens before decisions are made and before actions are taken. Not providing the complete scoping materials to the public may be perceived by the public as a violation of the spirit of NEPA, if not the letter of the law.

In addition, scant information was available at the scoping meetings regarding the Railway project description, and the public information that is provided is often conflicting. For instance, the NOI states that the Railway would require a right-of-way approximately 100 feet wide along much of its length, although the right-of-way could be substantially wider in some locations. However, the April 19, 2019, Coalition response to STB provides a broad breakdown of right-of-way widths for each action alternative. The response indicates approximately 60 percent of the Indian Canyon Route (applicant preferred alternative) will require a right-of-way up to 100 feet each side of the centerline (200 feet in total), with the balance of the route including variances up to 700 feet each side of the centerline (1,400 feet in total). The entire Craig route is reported to require a right-of-way up to 200 feet each side of the centerline (400 feet in total), with variances up to 500 feet each side of the centerline. The right-of-way requirement may be an indication of the level of disturbance expected from the proposed Railway, and under-disclosing the necessary

right-of-way width in the NOI does not allow the public to fully appreciate or comment upon the potential impacts of the Railway. The STB and BLM need to be more transparent in their disclosures and make the Railway POD available to the public as soon as possible, then potentially extend the public scoping comment period another 30 days to allow the public adequate time to evaluate and comment on the data.

Comments to consider about the Draft Scope of Study

The NOI includes a Draft Scope of Study for the EIS, providing a generic study description of 14 study topics. It is unclear from the terminology used in the NOI – “... the Coalition **plans** to file a request ...” (emphasis added) – whether the Coalition has actually filed an application, and whether that application includes a robust Plan of Development (POD) providing a complete description of construction, operation, and decommissioning techniques for the Railway. Without a robust POD, it is unclear how the STB and BLM were able to adequately identify potential project impacts to develop an adequate Draft Scope of Study. BLM requires a POD to accompany an application for a ROW. TransWest has reviewed the generic description of the study topics and, in spite of the shortcomings of the project description, provides the following comments for STB and BLM consideration in their analysis.

Transportation

The Draft Scope of Study for the EIS indicates a very superficial evaluation of transportation. During the Vernal scoping meeting, local officials noted there will be no relief from heavy truck traffic to Salt Lake City since the Railway will primarily ship products to the nation’s south and southeastern states (Vernal City Mayor).

The Seven County Coalition’s Response to the STB Office of Environmental Analysis April 12, 2019 Request for Information #1 (April 19, 2019) states that “the railway’s anticipated primary traffic source is the crude oil productions industry, which produces crude oil and consumes fracturing sand and tubular products (e.g., steel pipe and drill stem).” The response goes on to describe, but dismiss, transload facilities for loading and unloading freight as unknown in number and location. The response also describes a proposed crude oil upgrader to condition the crude to allow efficient rail transport. The STB must require the Coalition to provide reasonable assumptions for transload facilities and the crude oil upgrader for analysis as connected actions in the EIS. These facilities have potential negative impacts to transportation across the Uintah Basin.

With no relief from truck traffic to Salt Lake City, and increased local truck traffic associated with increasing production from 80,000 barrels of oil per day (bbl./d) to 225,000+ bbl./d, transportation is at the heart of significant environmental impacts to air quality, public health and safety, and recreation. The proposed Draft Scope of Study severely under-scopes the breadth of the required analysis, and the STB and BLM must perform a robust analysis of transportation and its impact on the environment.

Air Quality

The Draft Scope of Study for air quality cites evaluation of air emissions from operations of the Railway, including greenhouse gas emissions, and “potential emissions from the freighted product, as appropriate.” The use of the qualifier “as appropriate” is concerning. This implies less than a robust analysis of the operation of the Railway, and the associated impacts from production and use of the increased production of petroleum products (i.e., 80k bbl./d to 225k bbl./d) such as fugitive emissions during production, transport, refining, and storage; combustion and increased vehicular traffic, etc. Given the fragile nature of air quality in the Salt Lake City area and the Uintah Basin, a robust air quality analysis must be conducted. The analysis must also include impacts to air quality in any non-attainment zone crossed by the railway and new and increased refining capacity at the destination(s) where refining will take place. In addition, the analysis must include regional impacts such as acid deposition to Class I (e.g. Mount Zirkel Wilderness Area) and sensitive Class II (e.g. Dinosaur National Monument and Flaming Gorge National Recreation Area) areas.

Cultural

TransWest recognizes the challenges in siting major linear projects in the Uintah Basin and within the exterior boundaries of the Uintah and Ouray Indian Reservation. In particular, compliance with the National Historic Preservation Act (NHPA), and STB’s and BLM’s obligation to conduct government-to-government consultation with federally recognized Indian tribes, can be complicated. TransWest stands ready to work with the STB, BLM and the Coalition in siting of the proposed Railway and resolving any potential conflicts between the proposed action alternatives and TransWest’s approved ROW grant for the TWE Project. With regard to the Section 106 process under the NHPA, TransWest requests status as an invited consulting party; TransWest has a demonstrated legal, economic, or historic preservation interest in the federal undertaking or affected properties. [see 36 CFR § 800.2(c)(5)]

Biological Resources

The three proposed routes of the Railway cross habitats of a number of federally protected species and BLM special status species, including the Uintah Basin hookless cactus, Ute ladies’-tresses orchid, Barneby ridgecress, and Goodrich blazingstar. Portions of the three routes also cross Greater sage-grouse priority and general habitat. The EIS must disclose and evaluate impacts of the proposed Railway to federally protected species and BLM special status species and include mitigation measures to protect those species.

Paleontological and Mineral Resources

Much of the area traversed by the three proposed Railway routes is within Potential Fossil Yield Classes (PFYC) 4 and 5 and contains a number of important fossil bearing formations. These formations have the potential to have world-class fossil resources as demonstrated by the Cleveland-Lloyd Dinosaur Quarry National Landmark and the Dinosaur National Monument. The Draft Scope of Study includes Geology and Soils, but the generic scope description does not include an analysis of paleontological and mineral resources. The BLM has imposed robust

requirements on other projects to analyze and disclose impacts to paleontological and mineral resources in their EISs, to conduct pre-Notice To Proceed field surveys, and to implement mitigation and construction monitoring requirements for paleontological resources. The Railway EIS must similarly include analysis of paleontological and mineral resources and include appropriate mitigation and monitoring measures.

Other Resources

There have been a number of EISs prepared for energy-related projects in the Uintah Basin including oil and gas development, pipelines and electric transmission lines. A review of those other EISs has found a number of additional resources that BLM has analyzed. Some of these resources not included in the Draft Scope of Study include Special Designation Areas, wildland fires, range, noise, and human health. The NOI is silent on providing rationale for early elimination of these resources. The STB and BLM need to evaluate each of these resources in the Railway EIS similar to other major projects in the region or include a defensible reason for eliminating the resource from analysis.

More particularly, the Railway will impact Lands with Wilderness Characteristics (LWC). The EIS must evaluate the impacts on LWCs and provide for appropriate mitigation. If current inventories do not exist, then the BLM must require that inventories be conducted.

Impacts on land use, including livestock operations, must be analyzed by the STB and BLM in the EIS. TransWest's affiliate owns large ranches in Wyoming and Colorado traversed by railways. Many railroad ROWs are fenced, which presents a barrier to livestock movement. If not fenced, the railroad tracks are a potential collision hazard. The same is true for terrestrial wildlife. The STB and BLM must not overlook these types of impacts in the EIS.

Cumulative Impacts and Connected Actions

The STB and BLM must disclose and evaluate in the EIS all past, present and reasonable foreseeable future actions. The STB and BLM must also consider connected actions. Actions are connected if they (i) automatically trigger other actions which may require environmental impact statements, (ii) cannot or will not proceed unless other actions are taken previously or simultaneously or (iii) are interdependent parts of a larger action and depend on the larger action for their justification. The Coalition acknowledges in their April 19, 2019, STB response to Request for Information #1 a number of facilities it claims are not proposed to be constructed, specifically transload facilities. This is confusing, as it is unclear how freight described in the NOI would be loaded and unloaded if not for transload facilities. Absence a plausible explanation of how freight will be loaded and unloaded on the trains operating on the Railway without transload facilities, transload facilities must be considered as a connected action and the impacts disclosed and analyzed in the EIS.

The Coalition response to STB also describes a Memorandum of Understanding with Uintah Advantage to develop a proposed crude oil upgrader. If not for the crude oil upgrader, the waxy crude from the Uintah Basin could not be economically shipped by rail; therefore, the crude oil upgrader is a connected action. The NOI also does not describe other Railway components that

would impact the environment, such as electric supply, water supply, and any proposed pipelines and powerlines. The STB and BLM must conduct an exhaustive review of the Railway POD, once submitted, to identify a complete project description, and all connected actions and cumulative impacts and insure that such actions and impacts are fully disclosed and analyzed in the EIS. The agencies must also be aware of improperly segmenting connected actions. Unlawful segmentation occurs when an agency artificially divides a major federal action into smaller components to avoid application of NEPA to some of its segments.

Conclusion and request to join project mailing and notification lists

TransWest supports thoughtful, carefully planned, responsible energy projects along with environmental protection measures appropriate to the scope and scale of the project. TransWest offers its comments on the Draft Scope of Study to ensure a robust and defensible EIS and to assist the STB and BLM in carrying out their responsibilities under NEPA.

We request that this letter be added to the Administrative Record for Seven County Coalition's application, when it is filed.

Also, as a party potentially affected by STB and BLM decisions, we request formal notification of any decision by STB and Cooperating Agencies regarding the Coalition's application. Please add me to your mailing and notification lists concerning any further action on the Coalition's application:

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Attention: Garry Miller
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Thank you again for this opportunity to provide comments on the Draft Scope of Study.

Sincerely,



Garry L. Miller
Vice President
Land and Environmental Affairs