

Wayland, Joshua

From: Jeff Comstock <jcomstock@moffatcounty.net>
Sent: Thursday, May 30, 2019 1:43 PM
To: Wayland, Joshua; Rutson, Vicki
Cc: Brian Barton; 'mmckee'; 'Don Cook'; 'Ray Beck'
Subject: Moffat County Colorado Cooperating Agency Letter
Attachments: Surface Transportation Board (STB) Cooperating Agency-Moffat County Colorado-2019.pdf

Josh and Vicki,

Thank you for meeting with myself and Commissioner Ray Beck last week regarding the Uinta Basin Railway. As per your request, see the attached Cooperating Agency Letter from Moffat County. Please contact me with any questions.

Jeff Comstock, Director

Moffat County Natural Resources Dept.
221 W. Victory Way, Suite 130
Craig, Colorado 81625
Phone: (970) 826-3400



May 30, 2019

VIA EMAIL

Victoria Rutson
Director, Office of Environmental Analysis
and Federal Preservation Officer
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
Vicki.Rutson@stb.gov

Joshua Wayland
Environmental Protection Specialist
Surface Transportation Board
Office of Environmental Analysis
395 E Street, SW
Washington, DC 20423-0001
Joshua.Wayland@stb.gov

Re: Cooperating Agency Request – Docket No. FD 36284

Dear Director Rutson and Mr. Wayland:

On May 21, 2019, Moffat County Commissioner Ray Beck and Moffat County Director of Natural Resources Jeff Comstock (*together* “Moffat County”) met with staff of the Surface Transportation Board (“STB”) to discuss the Uinta Basin railway project. During the meeting, STB informed Moffat County that it would not invite Moffat County to participate as a Cooperating Agency in the National Environmental Policy Act (“NEPA”) decision making process for the project because the Project Proponent (*e.g.* 7 County Coalition) is itself a collection of counties that would also qualify as Cooperating Agencies. This confused logic ignores the language of NEPA and STB rules.

STB staff seemed to imply that NEPA rules regarding cooperating agency status do not apply to STB, or, that for this project, the NEPA rules would prove too cumbersome to implement universally. As to the first, STB rules incorporate by reference NEPA and bind the STB to the Council on Environmental Quality (“CEQ”) rules. *See* 49 C.F.R. § 1105.1 (STB “rules are designed to assure adequate consideration of environmental and energy factors in the Board's decision making process pursuant to the [NEPA].”). The STB is no more excepted from compliance with NEPA procedures as any other federal agency implementing or proposing a major federal action that affects the human environment – courts have already affirmed this most basic principle. *Citizens Against Rails-to-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1150 (D.C. Cir. 2001) (holding that NEPA “applies to the STB’s decisions” on rail line abandonments). Thus, STB staff’s implication that NEPA and its rules are somehow not the governing law, is gravely inaccurate.

Nor does it matter how cumbersome or difficult it is to implement the NEPA rules when the NEPA rules are clear. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”). The CEQ rules are plainly written and require that “[u]pon request of the lead agency, any other Federal agency which has jurisdiction by law *shall be a*

cooperating agency." 40 C.F.R. § 1501.6 (emphasis added); *see also* 40 C.F.R. § 1508.5. Moffat County has land use planning authority and jurisdiction by law to issue conditional use permits within the County boundaries. One of the proposed routes will pass through Moffat County and, therefore, Moffat County will have permitting authority over the construction of the route at some point. Colo. Rev. Stat. §§ 29-20-102, 104. Thus, the STP *must* invite, and accept, Moffat County as a Cooperating Agency.

Additionally, any agency that has "special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency." 40 C.F.R. § 1501.6. Moffat County has significant experience working with energy transmission companies, natural gas developers, wind and solar energy, transportation planning, wildlife migration and sensitive species planning, with the Bureau of Land Management, U.S. Forest Service, the National Park Service, and the Bureau of Reclamation. Moffat County produces detailed comments, discrete recommendations, and thoughtful analysis in all aspects of its participation. Moffat County participates in a timely manner and provides local knowledge that the Project Proponent and the STP cannot produce. Thus, Moffat County has special expertise that the existing parties do not have, and can provide insights as is proven by Moffat County's extensive track record.

Moffat County, therefore, requests that the STB invite Moffat County to participate as a Cooperating Agency under CEQ and STB rules and provide a Memorandum of Understanding outlining Moffat County's duties. If necessary, Moffat County can produce the MOU.

Sincerely,



Don Cook, Chairman
Moffat County Commissioner



Ray Beck, District 2
Moffat County Commissioner



Donald Broom, District 3
Moffat County Commissioner

cc: Mike McKee, 7 County Coalition Director