



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Denver Federal Center, Building 67, Room 118
Post Office Box 25007 (D-108)
Denver, Colorado 80225-0007

August 1, 2019

ER 19/0266

Joshua Wayland
Surface Transportation Board
9300 Lee Highway
Fairfax, VA 22031

Dear Mr. Wayland:

The Department of the Interior (Department) has reviewed the Notice of Intent (NOI) from the Surface Transportation Board to prepare an Environmental Impact Statement (EIS) for the Seven County Infrastructure Coalition (Coalition) Rail Construction and Operation in Utah, Docket No. FD 36284. The Coalition proposes to construct and operate an approximately 80-mile rail line. The Coalition anticipates that shippers would use the proposed rail line to transport crude oil, gilsonite, coal, and other mineral and agricultural products out of the Uinta Basin to markets across the United States.

The Coalition's preferred route would extend generally southwest from terminus points near Myton and Leland Bench, Utah, through Indian Canyon to a connection with an existing rail line owned by Union Pacific Railroad Company near Kyune, Utah (Indian Canyon Route). The Indian Canyon Route is located in Utah, Carbon, Duchesne, and Uintah Counties. The Coalition has identified two potential alternatives to the Indian Canyon Route that would be economically and technically feasible. One of those proposed alternatives would connect the terminus points near Myton and Leland Bench to the Union Pacific (UP) rail line near Kyune (Wells Draw Route) by following Wells Draw and Argyle Canyon, crossing Utah, Carbon, Duchesne, and Uintah Counties in Utah. The second proposed alternative (Craig Route) would extend eastward from the terminus points near Myton and Leland Bench to a connection with a UP rail line near Craig, Colorado, and would cross Uintah and Duchesne Counties in Utah, as well as Moffat and Rio Blanco Counties in Colorado.

U.S. Fish and Wildlife Service (USFWS) Comments

The USFWS submits the following comments pursuant to our authorities under the National Environmental Policy Act, Endangered Species Act, and Migratory Bird Treaty Act.

Threatened and Endangered Species

Federal agencies have specific responsibilities under section 7 of the Endangered Species Act (ESA). You submitted a list of federally threatened and endangered species that may occur in the project area on April 10, 2019. We agree with your species list, and recommend you review the proposed action and determine if it will affect any listed species or critical habitat. If you determine, with our concurrence, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) with us is required if you determine that an action is “likely to adversely affect” a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). You should also confer with us on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to us with a completed biological assessment and any other relevant information (50 CFR 402.12).

We also direct your attention to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Only a Federal agency can enter into formal ESA section 7 consultation with the USFWS. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by providing written notice of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

Migratory birds

The Migratory Bird Treaty Act (MBTA) is the cornerstone of migratory bird conservation and protection in the United States. The MBTA implements four treaties that provide for international protection of migratory birds. The USFWS maintains a list of all species protected by the MBTA at 50 C.F.R. § 10.13. This list includes over one thousand species of migratory birds, including eagles and other raptors, waterfowl, shorebirds, seabirds, wading birds, and passerines. The MBTA does not protect introduced species such as the house (English) sparrow, European starling, rock dove (pigeon), Eurasian collared-dove, and non-migratory upland game birds.

The USFWS offers the following conservation recommendations for inclusion in your project description to conserve migratory birds:

- a. Any ground-disturbing activities or vegetation treatments should be performed before migratory birds begin nesting or after all young have fledged;
- b. If activities must be scheduled to start during the migratory bird breeding season, steps should be taken to prevent migratory birds from establishing nests in the potential impact

area. These steps could include covering equipment and structures and use of various excluders (e.g., noise). Birds can be hazed to prevent them from nesting until egg(s) are present in the nest. Do not haze or exclude nest access for eagles and threatened or endangered species;

- c. If activities must be scheduled during the migratory bird breeding season, a site-specific survey for nesting birds should be performed starting no more than 7 days prior to ground-disturbing activities or vegetation treatments. Birds with eggs or young cannot be hazed, and nests with eggs or young cannot be moved until young are no longer dependent on the nest. Confirmation that all young have fledged should be made by a qualified biologist; and,
- d. If nesting birds are found during the survey, appropriate seasonal or spatial buffers should be established around nests. Vegetation treatments or ground-disturbing activities within the buffer areas should be postponed until the birds have left the nest. A qualified biologist should confirm that all young have fledged.

We recommend the use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck 2002) to provide consistent application of raptor protection measures and full compliance with environmental laws regarding raptor protection. We provide recommendations for raptor surveys and conservation measures to ensure that proposed projects will avoid adverse impacts to raptors. Locations of existing raptor nests should be identified prior to the initiation of project activities. Appropriate spatial buffer zones of inactivity should be established during crucial breeding and nesting periods relative to raptor nest sites or territories. Raptor arrival at nesting sites can occur as early as December for certain species. Nesting and fledging can continue through August.

Greater sage-grouse

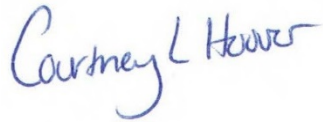
The Indian Canyon and Wells Draw routes cross habitat managed for greater sage-grouse. Specifically, the Indian Canyon and Wells Draw routes cross the Carbon sage-grouse management area (SGMA) and the Wells Draw route is within 100 feet of the Uintah SGMA. These SGMAs are identified as a high priority area for sage-grouse conservation by the state of Utah (State of Utah 2019). The routes additionally cross a Priority Habitat Management Area (PHMA) managed by the Bureau of Land Management (BLM). The BLM manages PHMA to exclude or avoid disturbance to greater sage-grouse and their habitat, and to minimize impacts where they cannot be avoided (BLM 2019). Finally, each route is within 1-mile of the Anthro Mountain PHMA unit managed by the Forest Service for sustainability of greater sage-grouse populations (USFS 2019). We recommend you follow conservation guidance identified in the relevant management plans, including the *Utah Conservation Plan for Greater Sage-Grouse* (State of Utah 2019), *Utah Greater Sage-Grouse Approved Resource Management Plan Amendment* (BLM 2019), and the *Draft Land Management Plan Amendment for National Forest System Land in Utah* (USFS 2019).

Mr. Wayland

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We appreciate the opportunity to provide these comments. If you require further assistance or have questions about our comments, please contact Joe Moore at (385) 285-7921 or joseph_moore@fws.gov.

Sincerely,

A handwritten signature in blue ink that reads "Courtney L Hoover". The signature is written in a cursive, flowing style.

Courtney Hoover
Regional Environmental Officer
Office of Environmental Policy and Compliance