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Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36284, Seven County Infrastructure Coalition – Rail
Construction and Operation Exemption – In Utah, Carbon, Duchesne, and
Uintah Counties, Utah

Dear Chief:

In light of the United States Supreme Court's decision in this matter, as well as the D.C. Circuit's recent decision to remand this matter without vacating the Board's original decision, I am enclosing a motion that asks the Board to reaffirm its exemption decision.

Please let me know if you have any questions.

Sincerely,



Jay C. Johnson

Encl.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

**SEVEN COUNTY INFRASTRUCTURE COALITION – RAIL
CONSTRUCTION AND OPERATION EXEMPTION – IN UTAH,
CARBON, DUCHESNE, AND UINTAH COUNTIES, UTAH**

**On remand from the United States Court of Appeals
for the District of Columbia Circuit**

MOTION TO REAFFIRM EXEMPTION DECISION

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November 13, 2025

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36284

**SEVEN COUNTY INFRASTRUCTURE COALITION – RAIL
CONSTRUCTION AND OPERATION EXEMPTION – IN UTAH,
CARBON, DUCHESNE, AND Uintah COUNTIES, UTAH**

MOTION TO REAFFIRM EXEMPTION DECISION

In December 2021, the Surface Transportation Board granted the Seven County Infrastructure Coalition’s petition for an exemption from the prior approval requirements of 49 U.S.C. § 10901.¹ *See* Final Decision (EB-51032). That decision authorized the Coalition to construct and operate a new rail line that will link the people living in the Uinta Basin with the national rail network. When project opponents challenged the Board’s decision, the D.C. Circuit Court of Appeals ruled against it, finding violations of the National Environmental Policy Act, the Endangered Species Act, and the ICC Termination Act. The U.S. Supreme Court, presented only with the D.C. Circuit’s NEPA ruling, reversed. The D.C. Circuit then remanded the case to the Board without vacating the Board’s original authorization decision. The Coalition is filing this motion to ask the Board to complete its review on remand and to reaffirm its decision authorizing construction and operation of the Uinta Basin Railway.

¹ References to the Coalition include co-petitioner Uinta Basin Railway, LLC.

INTRODUCTION

The Board's original decision was right. The NEPA review supporting that decision was, as the Supreme Court put it, "[a]bsolutely correct." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168 (2025). And the Board's Endangered Species Act review, which was not before the Supreme Court, reached the right result.

On remand, the Board need only make clear why its ESA "action area" properly excluded parts of the Colorado River hundreds of miles downline. That question almost answers itself: Even if the new railway is a but-for cause of more trains on other rail lines, the causal chain between the new railway and any harm to listed fish in the Colorado River is far too attenuated to meet the ESA's "reasonably certain to occur" standard. Beyond that, the candle-like waxy crude from the Uinta Basin is so easy to clean up, it poses no threat. For all those reasons, the Board chose the right ESA action area.

Once the NEPA and ESA issues are settled, the Board should reaffirm its original decision. The new railway is financially viable, as shown by its progress toward the issuance of millions of dollars in private activity bonds. That the project can win this funding reinforces the Board's long-held view that markets, not agencies, should assess financial viability. Nor does the project put at risk public health and safety or discourage energy conservation. The record shows that the railway will be safe. It will also promote energy conservation by taking trucks off the road. Thus, consistent with the Board's pro-construction presumption, the original decision approving the Uinta Basin Railway should be reaffirmed.

DISCUSSION

After the Supreme Court's decision in *Seven County*, the Coalition asked the D.C. Circuit to remand this case to the Board without vacating the Board's original decision. This kind of remand was proper, the Coalition argued, because the Supreme Court's decision completely vindicated the Board's NEPA review. And while the Coalition acknowledged that the Court did not address the D.C. Circuit's secondary holdings under the Endangered Species Act and the ICC Termination Act, it explained that the Board could readily address those issues. Opponents of the Uinta Basin Railway disputed the Coalition's reading of *Seven County* and asked the D.C. Circuit to vacate the Board's original decision. Faced with these competing views, the D.C. Circuit granted the Coalition's request and remanded this case without vacating. The Coalition now asks the Board to reaffirm its original decision.

I. After the Supreme Court's decision, the Board need not perform any more NEPA review.

The bulk of the D.C. Circuit's original decision addressed challenges to the Board's Environmental Impact Statement. That decision upheld some aspects of the Board's EIS and found fault with other aspects, leading to a judgment that "vacated" the EIS "in part." D.C. Cir. Judgment (Aug. 18, 2023). But the Supreme Court has now "reverse[d]" the D.C. Circuit's judgment, *Seven Cnty.*, 605 U.S. at 192, such that the Board need not perform any further NEPA review. That said, if the Board wants to take a belt-and-suspenders approach by addressing the "downline" environmental issues that project opponents have continued to complain about, those issues are not hard to fix.

A. The Supreme Court vindicated the Board’s NEPA review.

The Supreme Court’s decision in *Seven County* plainly affirmed the Board’s NEPA review, holding that the Board “needed to address only the effects of the 88-mile railroad line. And the Board’s EIS did so.” 605 U.S. at 174. That holding leaves no wiggle room. If the Board’s EIS addressed all the effects that it “needed to address,” as the Supreme Court expressly said, then there is nothing left under NEPA for the Board to do.

That conclusion fits with the scope and tone of the Court’s other rulings. For example, the Court held that lower courts “should defer to agencies’ decisions about ... how far to go in considering” the kinds of “indirect effects that might occur outside the immediate project area.” *Id.* at 182. Yet project opponents have claimed that the D.C. Circuit’s rejection of the Board’s “indirect or down-line impacts” review, *Eagle Cnty. v. Surface Transp. Bd.*, 82 F.4th 1152, 1181 (D.C. Cir. 2023), survived *Seven County*. It did not. The D.C. Circuit erred by failing to defer to the Board’s decisions about “how far to go in considering” indirect, downline impacts. Thus, under *Seven County*, the D.C. Circuit’s indirect effects decision must fall.

More broadly, the Supreme Court made clear that “the environmental effects of the project at hand constitute NEPA’s textual focus.” *Seven Cnty.*, 605 U.S. at 189–90. It scolded “project objectors” who treat NEPA as a “game” in which they “can engage in ‘unjustified obstructionism’ ... by raising a slew of remote effects that they think ‘ought to be’ considered.” *Id.* at 190 (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 553–54 (1978)). The slim chance of an accident or wildfire hundreds of miles

downline that the D.C. Circuit used to reverse the Board's EIS is just the kind of "remote effect" that this Supreme Court critique had in view. *See Eagle Cnty.*, 82 F.4th at 1182–85. After *Seven County*, agencies need not study "indirect effects that might occur" such a long way "outside the area of the immediate project." 605 U.S. at 182.

The Supreme Court was also openly frustrated with NEPA reviews and rulings that "have slowed down or blocked many projects" and with "project opponents" who use NEPA "to try to stop or at least slow down new infrastructure and construction projects." *Id.* at 183. It explained that NEPA is supposed to be a "modest procedural requirement," not a "blunt and haphazard tool" for "blocking or delaying" projects. *Id.* Here, the Board prepared an "extraordinarily lengthy EIS" that covered everything it "needed to." *Id.* at 173. Under *Seven County*, it need do no more.

B. If the Board chooses to address downline effects, it should do so efficiently.

The Coalition knows that opponents of the Uinta Basin Railway want to read the Supreme Court's decision far more narrowly. To them, the Court addressed *downstream* effects, but not *downline* effects (an unsound distinction that the Court never draws). After the Supreme Court's decision, the parties clashed on this issue in competing D.C. Circuit motions. And while the D.C. Circuit issued no opinion, it granted the Coalition's motion to remand without vacatur and denied project opponents' cross-motions. That action at least implies that the D.C. Circuit saw things the Coalition's way. Still, if the Board wants to address the project opponents' arguments on their own terms, it can

do so without much work. The D.C. Circuit's discussion of downline effects focuses on the need for more explanation, not more analysis. And after the Supreme Court's decision, explaining the Board's downline analysis should be easy.

1. The Board was justified in using national rail accident data.

The D.C. Circuit's first downline effects holding involved the best way to measure the risk of increased downline accidents. The Board had not ignored those risks. Its EIS predicted that "increased downline rail traffic" would lead to 0.89 more accidents per year in a high-traffic scenario and 0.31 more accidents in a low-traffic scenario. *Eagle Cnty.*, 82 F.4th at 1181–82. But project opponents were dissatisfied with these estimates for a technical reason: They claimed that "national data for train accident rates" was not good enough, even though the more specific data they wanted the Board to use was unavailable. *Id.* at 1182. Relying on a now-repealed NEPA rule, the D.C. Circuit sided with these opponents, faulting the Board for "failing to respond to significant opposing viewpoints." *Id.* (quoting *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1329 (D.C. Cir. 2021)).

At the outset, the D.C. Circuit's holding on this point should be ignored because the legal basis for it is now gone. Project opponents have always admitted that "there was limited data on accident rates for" the specific "geographic area" downline, but still argued that then-applicable NEPA rules "required the Board to explain why the information was unavailable and what actions the agency took to address that unavailability." *Id.* (citing 40 C.F.R.

§ 1502.22 (2019)) (internal quotation marks omitted). The D.C. Circuit agreed and ordered the Board to comply with the old NEPA rule. *Id.* But that rule—like all the other White House NEPA rules—was revoked earlier this year. *See* 90 Fed. Reg. 10610, 10613–14 (Feb. 25, 2025). As a result, the D.C. Circuit’s ruling on this point lacks a legal foundation and should not be followed.

As for the claim that the Board failed to explain its use of national accident rate data or to respond to “significant opposing viewpoints,” the Supreme Court’s decision in this case makes clear that the Board’s expert judgment is entitled to substantial deference. *Seven Cnty.*, 605 U.S. at 180. On top of that deference, the Board is entitled to draw “manageable line[s]” in conducting its NEPA review. *Id.* at 182. So if the Board thinks that the best, most manageable way to analyze accident rates in this case is to use national rail accident data, it need only say so. Requiring the Board to create a new dataset where one does not exist—or even to use different data that does exist—would contravene the Supreme Court’s emphatic holding that “the central principle of judicial review in NEPA cases is deference.” *Id.* at 179.

2. The Board’s conclusions about the low risk of wildfires are well-supported.

The D.C. Circuit’s finding that the Board did not take a “hard look” at downline wildfire risk is similarly thin. The court “recognize[d]” that “technological improvements in the rail industry and historic data on train-induced wildfires” supported the Board’s analysis. *Eagle Cnty.*, 82 F.4th at 1183. But it could not get over the Board’s statement that increased rail traffic “would not be a qualitatively ‘new ignition source.’” *Id.* at 1184. The Coalition believes

that this statement was just poor phrasing. To correct it, the Board can explain that while each new train is a “source” of potential wildfire risk, the overall risk of fires remains minuscule. That finding, as the D.C. Circuit essentially admits, fits with the “additional factors” on which the Board relied. *Id.* at 1183. Further, nothing in NEPA requires the Board to reject the Coalition’s project because wildfire risk may inch up. “NEPA is purely procedural.” *Seven Cnty.*, 605 U.S. at 177. It does not prevent the Board “from deciding that other values outweigh the environmental costs.” *Id.* (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

3. The Board can readily explain the low risks to downline water resources.

The D.C. Circuit’s final downline effects holding turns on its conclusion that the Board failed to “even consider[] the potential impacts on water resources downline” *Eagle Cnty.*, 82 F.4th at 1184. The court based this conclusion on what it saw as a concession that the Board had “fail[ed] altogether to mention the Colorado River in the Final EIS’s discussion of impacts on water resources.” *Id.* (citing Board Br. at 51–52). It was not enough, in the court’s view, for the Board to say in its decision and responses that it had “considered impacts of rail operations along existing rail line segments downline.” *Id.* (quoting Final Decision at 11).

If the Board wants to address the D.C. Circuit’s claims about downline water resources, it would not be hard to do. The Board has already projected that even at the highest traffic levels, the Coalition’s new rail line would cause fewer than one downline accident each year. FEIS at 3.2-6–3.2-7. And not all

such accidents are equally serious. An accident can be as small as an animal strike or a one-car derailment. That is why the Board predicts that only a quarter of downline accidents would result in spills, and that many of those spills would be too small to cause any harm to water resources—if they even occurred along a part of the Union Pacific line that parallels the Colorado River. *See id.* at 3.4-33; E-2.

The record is also clear that Uinta Basin waxy crude “does not flow at room temperature.” *Id.* at 3.3-29. Thus, if a spill happened on land, the waxy crude would “tend[] not to disperse,” meaning that it likely would not reach any nearby water resources. *Id.* at 3.3-30. Even if waxy crude were spilled directly into water, it would “tend[] to form globules of semisolid material that lock it in place.” *Id.* These characteristics were demonstrated during a 2018 spill of heated crude from a tanker truck.² The record explains that “as the crude oil spilled onto the road surface, it began to harden, so a smaller amount entered the river.” *Id.* The waxy crude that did reach the river did not form a “slick on the water surface,” but instead “solidified and formed floating chunks that were easily removed by hand and with assistance from a boom that captured the oil chunks.” *Id.* Using these facts, the Board could readily find that the new rail line presents minimal risk to downline water resources. Under *Seven County*, courts would owe that finding “substantial deference.” 605 U.S. at 180.

Finally, the Supreme Court’s *Seven County* decision emphasizes that “inherent in Board approval of railroad lines is the understanding that any new

² Waxy crude would not be heated when it is transported by rail car, and thus its tendency to disperse would be even lower than it was during this 2018 spill.

freight railroad may transport different kinds of cargo over an approved line—from corn to cars to coal and the like.” 605 U.S. at 191 n.6. Railroads are common carriers, and as such cannot refuse to transport any product “on reasonable request.” *Id.* (quoting 49 U.S.C. § 11101(a)). Yet the D.C. Circuit’s downline effects holding depends on the assumption that “up to 9.5 loaded *oil trains* a day” will travel on the existing Union Pacific line. *Eagle Cnty.*, 82 F.4th at 1184 (emphasis added). Under *Seven County*, the Board can respect the railroads’ common carrier obligations by setting aside the intended *cargo* and focusing instead on the effects of the rail line itself. 605 U.S. at 191 n.6; *see id.* at 202 (Sotomayor, J., concurring) (noting that “the Board could not have rejected petitioners’ application in order to prevent the harmful effects of oil drilling and refining”).

* * *

The Supreme Court vindicated the Board’s original EIS. But if the Board chooses to bolster its downline effects analysis, it should not respond to the D.C. Circuit on its own terms. Instead, the Office of Environmental Analysis should prepare an environmental memorandum explaining that, even if project opponents were right, no supplemental review is needed because the Supreme Court’s rulings limit the Board’s obligations on remand. Thus, the Board “may draw what it reasonably concludes is a manageable line” when it considers downline impacts. *Seven Cnty.*, 605 U.S. at 189 (internal quotation marks and citations omitted). As discussed above, that line can be drawn using data and information that the Board already has. And, once drawn, the Board’s line is owed deference. *Id.*

II. The Board properly defined the ESA action area.

Even though the Supreme Court vindicated the Board's NEPA review, the Board has more work to do under the Endangered Species Act. The Board and the U.S. Fish and Wildlife Service had agreed that the ESA "action area" for the Uinta Basin Railway—i.e., the "areas affected directly or indirectly" by the project, 50 C.F.R. § 402.02—included the railway's footprint, a buffer corridor on either side of the line, and a part of the Upper Colorado River Basin that might be indirectly affected by surface or groundwater use. Biological Assessment (BA) at 3-3; Biological Opinion (BO) at 13. The D.C. Circuit was not convinced. It held that the Board's reasons for excluding "waterways down-line" from its action area were "entirely unclear." *Eagle Cnty.*, 82 F.4th at 1187–88. And, having found that "the Board failed to adequately explain its reasoning given the record evidence," the court rejected the Board's action area. *Id.* at 1188. But a closer look at that evidence shows that it actually supports the Board's action area. Thus, the Board can solve this problem with a better explanation.

A. A project's action area depends on its reasonably certain effects.

Neither the Board's Biological Assessment nor the Fish and Wildlife Service's Biological Opinion explains the link between the railway's effects and the ESA action area. That pretermission is understandable, because "action area" is a common-sense concept. But sometimes agencies use rules to codify common sense. Tracing the ESA rules' definition of "action area" confirms what common sense suggests: agencies need not study attenuated effects alleged to occur hundreds of miles away.

The ESA rules define “action area” as any place “affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02. This definition makes clear that the ESA action area goes beyond the “immediate” project area. But it does not explain the reach of the phrase “affected directly or indirectly.” Answering that question requires looking to a different definition, “Effects of the action.”

The rules define “[e]ffects of the action” to include “all consequences to listed species or critical habitat that are caused by the proposed action” 50 C.F.R. § 402.02. The same rule then explains that “[a] consequence is caused by the proposed action when it would not occur but for the proposed action and it is *reasonably certain* to occur.” *Id.* (emphasis added). Here lies the heart of the issue: Because an action’s effects must be “reasonably certain,” a place can be “affected” by an action only if it is “reasonably certain” that the action will have “consequences” there. Thus, the ESA’s “action area” extends only as far as the action’s “reasonably certain” effects.

Of course, the phrase “reasonably certain” creates its own line-drawing problem. The 2019 version of the ESA rules addressed this problem by explaining that “there are situations, such as when consequences are so remote in time or location, or are only reached following a lengthy causal chain of events, that the consequences would not be considered reasonably certain to occur.” 84 Fed. Reg. 44976, 44981 (Aug. 27, 2019). And while the 2024 ESA rule revision pulled this point from the rule itself, it recognized that “[t]he fundamental test of ‘reasonably certain to occur’” still “places limitations on the scope of [the Services’] causation analysis and avoids speculation.” 89 Fed. Reg. 24268,

24282 (April 5, 2024). For now, it is enough to say that the “action area” does not encompass the location of every conceivable effect on listed species or their critical habitat, but only places where those effects are “reasonably certain to occur.”

B. Effects on protected species in the Colorado River are not reasonably certain.

Given this reasonably certain standard, the Board and the Fish and Wildlife Service properly set the action area here. They did not stop at the railway’s footprint, but expanded the action area to include both a wider corridor where the project could directly or indirectly affect plants or animals and the Upper Colorado River Basin, where the project might have indirect effects on fish through its use of surface and groundwater. BA at 3-3; BO at 13. The D.C. Circuit’s decision, brushing past the reasonably-certain-to-occur point, asks why the action area did not also include places much farther away from the project—specifically, places where the existing Union Pacific line “intersects with the Colorado River.” *Eagle Cnty.*, 82 F.4th at 1187. Such places only exist more than 100 miles from the end of the Uinta Basin Railway. Even so, project opponents allege that the railway will increase traffic on the existing Union Pacific line, leading to “contamination from spills and leaks” that “may pose harm to the protected fish and their critical habitat” in the Colorado River. *Eagle Cnty.*, 82 F.4th at 1187. Faced with this claim, the D.C. Circuit found the Board’s explanation for its action area “entirely unclear.” *Id.* at 1188. A closer look at the record and a more detailed explanation of the action area will supply any missing clarity.

1. It is not reasonably certain that trains on the existing Union Pacific line will be routed through Colorado.

Start with the Board's prediction that the Uinta Basin Railway will cause more traffic on the 450-mile stretch of existing Union Pacific line from Kyune, Utah to Denver, Colorado. FEIS at 3.1-1; C-6 (Figure C-1). That prediction hinged, first of all, on the Board's "reasonable estimated distribution of destinations for Uinta Basin crude oil," most of which the Board expected to end up at Gulf Coast refineries. *Id.* at C-3–C-4. Assuming those destinations, the Board used "PC Rail Miler's routing program" to "simulate[] the most likely movement" of the trains. *Id.* at C-4.

At the same time, the Board knew that the Coalition "does not and would not operate the existing rail lines downline" of its project, and thus "cannot control how trains would be routed on those existing rail lines." *Id.* at T-36. Nor does the Board itself have such control. Rather, "railroad operations and the routing of train traffic are subject to the sole ongoing control of the railroad, and are not controlled by the [Board]." *CSX Corp. & CSX Transp., Inc., Norfolk S. Corp. & Norfolk S. Ry. Co. – Control & Operating Leases/Agreements – Conrail Inc. & Consolidated Rail Corp.*, 3 S.T.B. 196, 1998 WL 456510, at *106 n.248 (July 20, 1998); *see* FEIS at T-36. Here, those downline railroads with control are Union Pacific and BNSF. FEIS at 3.1-2.

The Board's downline traffic predictions were made for NEPA purposes, and they considered reasonably foreseeable downline traffic. *See* FEIS at C-1. But the ESA's "reasonably certain to occur" standard sets "a higher threshold than 'reasonably foreseeable'" effects under NEPA. 84 Fed. Reg. at 44992.

From a “reasonably certain” perspective, the chain of causation on which the Board’s downline analysis depends includes significant *uncertainty*. Not only is it uncertain how much traffic the Uinta Basin Railway will generate for the Union Pacific line—the Board predicts anywhere from 3.68 trains per day to 10.52 trains per day, FEIS at 3.1-1—predicting where those trains will go verges on speculation. The Board did the best it could with the information it had, but it rightly admits the many variables in play. *See id.* at C-2–C-4. If it turns out that market demand is higher in the Pacific Northwest, for example, fewer trains will travel through Colorado. This destination uncertainty alone undermines any claim that harm to Colorado River species is reasonably certain.

On top of this baseline destination uncertainty, the Board’s modeled predictions about how Union Pacific and BNSF will route their trains may turn out to be wrong. Indeed, Uinta Basin waxy crude is today being trucked to transload facilities on the Union Pacific line, where it is at times sent through Utah, Wyoming, and Nebraska on its way to the Gulf Coast, rather than through Colorado. *Heaton V.S.* ¶ 14. This routing choice is out of the Board’s hands, much less the Coalition’s. But it highlights the uncertainty of the Board’s original predictions. More trains on the existing Union Pacific line may be a but-for result of the Uinta Basin Railway, but those trains are not reasonably certain to move through Colorado. Thus, the Board need not include Colorado in its ESA action area.

2. Any downline accidents, spills, or leaks are not reasonably certain to affect listed species or their protected habitat.

Rail routing is not the only source of uncertainty in the Board's downline effects predictions. Even if trains were reasonably certain go through Colorado on their way to Gulf Coast destinations, it would not make those trains reasonably certain to affect listed species or their protected habitat. A passing train does not automatically harm the fish in a nearby river. Rather, there must be reasonable certainty of something more. Here, there is not.

As already discussed, the Board used national accident data to project that, even at the highest levels of train traffic, the number of new accidents involving loaded freight trains would be fewer than one per year. FEIS at 3.2-6–3.2-7. These accidents, the Board explained, would involve other railroads that “have the right to determine how to operate and route their traffic” *Id.* at 3.2-7. That break in the causal chain alone makes it impossible to peg the Uinta Basin Railway as the reasonably certain cause of a downline accident.

Beyond that causal attenuation, accidents alone are not enough to harm listed species. The waxy crude that the trains are carrying would also have to spill. And the Board's data showed that such spills happened in just one-fourth of all loaded-train accidents. FEIS at 3.4-33. Since loaded-train accidents would happen less than once per year, FEIS at 3.2-6, that means one downline spill every *four years*—hardly sufficient to say that the Uinta Basin Railway is reasonably certain to cause harm under the ESA. What is more, past rail accidents involving crude oil “typically resulted in small releases,” *id.* at E-2, making ESA effects from accidents even more uncertain. Add to all these uncertainties and

unlikelihoods the fact that just 233 of the 450 rail miles between Kyune and Denver parallel the Colorado River. *Eagle Cnty.*, 82 F.4th at 1172. So the typically small, quadrennial spills that may occur downline could easily happen far from the Colorado River, where no listed species live. Because those factors do not equate to anything like a reasonably certain effect on species or their habitat, the Board did not err when it drew its ESA action area.

Finally, the characteristics of Uinta Basin waxy crude, mentioned above in the NEPA context, also preclude reasonably certain harm under the ESA. The record is clear that Uinta Basin waxy crude “does not flow at room temperature.” FEIS at 3.3-29. As a result, if there were a spill on land near the tracks, the waxy crude would “tend[] not to disperse,” meaning that it likely would not reach any listed species that happened to be swimming in a nearby waterway. *Id.* at 3.3-30. And even if waxy crude were spilled directly into water, it would “tend[] to form globules of semisolid material that lock it in place,” making cleanup simple and harm unlikely. *Id.* Together, these traits mean that Uinta Basin waxy crude would be no threat to listed species in the Colorado River, even if it were somehow, someday spilled there.

As for the “leaks or drips of fuel or lubricants” that the D.C. Circuit flagged as a potential risk, *Eagle Cnty.*, 82 F.4th at 1188, the evidence does not prove reasonably certain harm under the ESA. At the outset, for reasons explained above, it is not reasonably certain that the Uinta Basin Railway will cause large numbers of trains to travel on the existing Union Pacific line through Colorado. The market may instead dictate different destinations for the Basin’s waxy crude, or the railroads that operate on the existing line may choose to take the

trains a different way. But even if more trains do travel along the existing Union Pacific line through Colorado, “leaks or drips” from those trains are not reasonably certain to harm listed species or their protected habitat. The causal chain between the new railway and a speculative leak hundreds of miles away that might or might not reach the Colorado River and, once there, might or might not affect listed species, is just too attenuated. The ESA rules’ reasonably certain standard is supposed to “prevent[] the Services from engaging in” such “speculative analyses.” 89 Fed. Reg. at 24270.

* * *

The D.C. Circuit questioned the Board’s reasons for “narrowly defining the [ESA] action area to not include waterways” along the existing “Union Pacific Line.” *Eagle Cnty.*, 82 F.4th at 1187–88. But on closer examination, the Board’s reasons were sound. All that is needed now is to state those reasons more clearly in an updated Biological Assessment.³ Specifically, the Board should explain that it has defined its ESA action area by considering what effects to listed species and critical habitat are both the but-for result of the Uinta Basin Railway and reasonably certain to occur. 50 C.F.R. § 402.02. Downline effects on Colorado River species are not reasonably certain to occur because (1) it is not reasonably certain that market demand and independent railroad

³ This update could be as simple as a letter to the Fish and Wildlife Service explaining the Board’s reasons for sticking with its original ESA action area. The rest of the Board’s Biological Assessment remains valid. Then, since the D.C. Circuit vacated the Service’s Biological Opinion only insofar as it adopted the Board’s action area, *Eagle Cnty.*, 82 F.4th at 1188, the Service could readopt its Biological Opinion with a better-explained action area.

decisions will cause trains to be routed on the Union Pacific line through Colorado; (2) the risk of significant spills of waxy crude into the Colorado River is so small that it does not qualify as reasonably certain to occur; (3) the nature of waxy crude is such that, even if it were spilled, it is not reasonably certain to harm species in the Colorado River; and (4) the causal chain between the Uinta Basin Railway and any leaks, drips, or spills hundreds of miles away in the Colorado River is too attenuated to qualify as reasonably certain. Each of these reasons alone is enough to find that the ESA action area does not extend down-line to the Colorado River; combined, they provide overwhelming support for the Board's action area.

III. Because the Uinta Basin Railway advances the rail transportation policy, the Board's decision to authorize it was right.

The D.C. Circuit separately held that the Board's ICC Termination Act analysis was arbitrary and capricious because it lacked "a reasoned application of the appropriate Rail Policies" in 49 U.S.C. § 10101. *Eagle Cnty.*, 82 F.4th at 1196. And even though the D.C. Circuit has now remanded this case without vacating the Board's decision authorizing the new railway, the Board still must address this holding. To that end, a fuller discussion of the Act's rail transportation policy is in order.

A. The ICC Termination Act favors both exemptions and rail construction.

Before tackling the substance of the D.C. Circuit's rail transportation policy holdings, it is crucial to understand the procedural context in which the Board is acting. The ICC Termination Act authorizes the Board to approve any

new rail construction that is part of the interstate rail network. 49 U.S.C. § 10901(a). But the Act is hardly neutral about whether the Board ought to approve such construction: “The Board *shall issue* a certificate authorizing” construction of a new rail line “unless” it finds that construction is “inconsistent with the public convenience and necessity.” *Id.* § 10901(c) (emphasis added). This statutory command puts a Congressional thumb on the scale, creating “a clear presumption in favor of approving railways.” *Seven Cnty.*, 605 U.S. at 194 (Sotomayor, J., concurring) (citing 49 U.S.C. § 10901(c)); *see also Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 552 (2003) (endorsing the same presumption).

Relying on this “clear presumption,” the Coalition asked the Board to authorize the construction and operation of its proposed new rail line via an exemption from the usual application process. *See* Pet. for Exemption (May 29, 2020). Such an exemption request was nothing unusual. The Act tells the Board to use the exemption process “to the maximum extent” it can under the law. 49 U.S.C. § 10502(a). As the Board itself has explained, Congress “directed the Board to exempt a rail construction proposal from the requirements of the full application process, even if it has a significant scope, so long as the application of § 10901 is not necessary to carry out the rail transportation policy and there is no danger of market power abuse.” *Cal. High-Speed Rail Auth. – Construction Exemption – Merced, Madera & Fresno Cntys., Cal.*, STB Docket No. FD 35724, 2013 WL 3053064, at *11 (S.T.B. June 13, 2013).

The ICC Termination Act thus favors both the process that the Board used here—an exemption under section 10502—and its decision to authorize new

rail construction. But that did not stop the D.C. Circuit from questioning the Board's process and (more so) its substantive decision. *See Eagle Cnty.*, 82 F.4th at 1191–96. Both these questions can be answered with more explanation on remand.

B. An exemption is the proper process for reviewing the proposed Uinta Basin Railway.

The Board does not ignore the rail transportation policy when it uses an exemption. To the contrary, the Act requires the Board to “carry out the transportation policy of section 10101” even when it uses an exemption. 49 U.S.C. § 10502(a)(1); *see Coal Exporters Ass’n v. U.S.*, 745 F.2d 76, 94 n.22 (D.C. Cir. 1984) (explaining that the “transportation policy must guide the ICC in all its decisions”). The point of an exemption is to minimize unnecessary regulatory process. When exemptions are used freely, as Congress intended, the full application process is required only if it is “necessary” to fulfill the Board's duties under the rail transportation policy. 49 U.S.C. § 10502(a)(1).

Here, the Board explained that the “record developed” during the exemption proceeding was “substantial, and additional regulatory processes would not likely add to the substance of what has been presented.” Final Decision at 24. That is the quintessential reason for using an exemption. But the D.C. Circuit, claiming that the Board's “limited weighing” of “environmental policies” did not show “any serious grappling with the significant potential for environmental harm,” suggested that those harms might “necessitate[] additional scrutiny and ‘more extensive proceedings.’” *Eagle Cnty.*, 82 F.4th at 1195 (quoting

Final Decision at 24). To the extent that critique was aimed at the use of an exemption, instead of at the transportation merits, it misses the mark.

Nothing in the D.C. Circuit’s decision explains how “more extensive proceedings” would shed more light on the Board’s weighing of the rail transportation policy. The Board’s 3600-page environmental review—now validated by the Supreme Court—gives the Board more than enough information about “environmental harm.” And nowhere does the D.C. Circuit even hint that more process is “necessary” for the Board to “carry out” any other rail transportation policies, 49 U.S.C. § 10502(a)(1). Rather, the core of the D.C. Circuit’s critique is the *substance* of the Board’s decision to authorize the Uinta Basin Railway. *See Eagle Cnty.*, 82 F.4th at 1191–96. The Board should thus reaffirm its use of the exemption process and focus on responding to the merits of the D.C. Circuit’s holdings.

C. The Uinta Basin Railway advances the ICC Termination Act’s rail transportation policy.

On the transportation merits, the D.C. Circuit held that the Board had “failed to conduct a reasoned application of the relevant [r]ail [p]olicies” under the ICC Termination Act. *Eagle Cnty.*, 82 F.4th at 1196. To reach this holding, the D.C. Circuit broke the Act’s rail policies into two groups: (1) economic and regulatory; and (2) environmental.⁴ It then found that the Board misapplied its “economic” and “regulatory” policies because it did not assess the new railway’s financial viability. *Id.* at 1192–94. It also found both that the Board’s

⁴ Nothing in the Act suggests that the rail policies can or should be divided in this way. The Coalition uses this division solely for convenience.

NEPA review “infect[ed]” its analysis of the Act’s “environmental policies” and that the Board did not “adequately consider” those policies. *Id.* at 1194–96. On remand, the Board should respond to the D.C. Circuit’s holdings on all these fronts by explaining its transportation merits decision in more detail.

1. Authorizing the Uinta Basin Railway will help ensure development of a sound rail system.

The D.C. Circuit’s holdings as to “economic” and “regulatory” rail policies turned on its perception that “the Board did not provide adequate attention to comments questioning” the Uinta Basin Railway’s “financial viability.” *Eagle Cnty.*, 82 F.4th at 1192. As the court of appeals saw it, the Board’s own precedent holds that the rail policy favoring “the development and continuation of a sound rail transportation system” could not be fulfilled if a lack of financing prevented the project from ever operating. *Id.* at 1192–93 (quoting 49 U.S.C. § 10101(4)). But that view misreads both the ICC Termination Act’s text and this Board’s precedent interpreting it.

First, the text. The Act’s rail policies instruct the Board “to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.” 49 U.S.C. § 10101(4). The plain language of this policy makes it the Board’s job to foster “development” of a “sound rail transportation system”—a job that goes to the Act’s pro-construction presumption. *Id.*; see *Seven Cnty.*, 605 U.S. at 194 (Sotomayor, J., concurring). Yet the D.C. Circuit’s decision raises the bar for approving new rail construction, suggesting that if a project faces “doubt” or “significant questions” about its

finances, the policy favoring “development” of the national rail system does not apply (or even weighs against the project). *Eagle Cnty.*, 82 F.4th at 1193. Such skepticism does not fit the rail policy’s text. A policy favoring “development” of the rail system—including construction of new rail lines—must favor an uncertain new project that would bring “effective competition” over no project at all. 49 U.S.C. § 10101(4). The D.C. Circuit’s contrary view is wrong and the Board should explicitly reject it.

Of course, the D.C. Circuit did not purport to be applying its own interpretation of the Act’s rail policies when it required a more detailed finding of financial fitness. It claimed instead that the Board itself “has not ignored serious concerns about financial viability in determining the transportation merits of a project.” *Eagle Cnty.*, 82 F.4th at 1193 (citing *Texas Cent. R.R. , LLC – Petition for Exemption – Passenger Rail Line Between Dallas & Houston, Tex.*, STB Docket No. FD 36025, 2020 WL 4036897 (STB served July 16, 2020)). And because the court of appeals found that the Board did not explain how the alleged “financial uncertainty” surrounding the Uinta Basin Railway “is meaningfully distinct” from the financial uncertainty in the Board’s *Texas Central* decision, it held that the Board here had adopted a “new rule” without the requisite “real explanation” for its “changing position.” *Eagle Cnty.*, 82 F.4th at 1193 (quoting *Baltimore Gas & Elec. Co. v. FERC*, 954 F.3d 279, 286 (D.C. Cir. 2020)).

Contrary to the D.C. Circuit’s claim, the *Texas Central* decision plainly “recognize[d] the role that financial markets play in determining whether a rail construction project is ultimately funded” *Texas Cent.*, 2020 WL 4036897, at *12. The Board applied the same rule here: “[T]he ultimate decision to go

forward with an approved project is in the hands of the applicant and the financial marketplace, not the agency.” Jan. 5, 2021 Decision (EB-50412) at 6 (citing *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 552 (8th Cir. 2003)). The facts in *Texas Central* led to a different result because that project involved questions about the applicant’s transparency in disclosing “increased costs and funding sources,” as well as a far greater “potential impact on numerous local landowners.” 2020 WL 4036897, at *11–*12 & nn.24, 27. Here, by contrast, the Coalition answered questions about financial viability by submitting a feasibility study and by showing support from the rail line’s likely customers. Jan. 5 Decision at 6. That is enough to distinguish this case from *Texas Central*. *Id.* at 6–7.

It may not be enough, though, to reiterate to the D.C. Circuit the valid distinctions between this case and *Texas Central*. To be sure the D.C. Circuit understands the Board’s precedent, the Board should make clear that a project’s financial viability is properly left in the hands of the financial markets, and that any contrary suggestion in past cases is overruled. This rule is especially sensible because in many cases, proving the financial viability of a project depends in part on its receiving Board approval. After all, investors want regulatory certainty as much as applicants do. So if the Board tries to scrutinize a project’s financial viability to decide whether the project should be approved, it will often find that question hard to answer before it makes an approval decision. This sort of chicken-and-egg problem can be avoided by relying first and foremost on the marketplace, which is in any case a better judge of financial viability than a regulator is likely to be. *See Mid States*, 345 F.3d at 552. And since the

D.C. Circuit acknowledged that the Board is free to adopt a “new rule” as long as it provides a suitable explanation, *Eagle Cnty.*, 82 F.4th at 1193, now is a good time to give the court of appeals the clarity it found lacking before.

Finally, thanks in part to improved regulatory certainty, the Coalition now has even more evidence of the railway’s “financial feasibility” than it had when it sought construction authority five years ago. To start, the Coalition has authorized \$2.4 billion in private activity bonds to fund construction of the project. *Heaton V.S.* ¶¶ 6–7. It expects to receive U.S. Department of Transportation approval soon. *Id.* ¶ 8. That alone is enough to answer any conceivable question about financial feasibility. On the demand side, production of Uinta Basin waxy crude oil has continued to surge. *Id.* ¶¶ 16–17. When the Coalition filed its petition in May 2020, Uinta Basin waxy crude production sat at around 60,000 barrels per day. *Id.* ¶ 16 (citing RBN Energy [report](#)). By May 2025, total production had nearly tripled to over 170,000 barrels per day. *Id.* ¶ 17. Some of this increase is being trucked nearly 100 miles to transload terminals on the existing Union Pacific line. *Id.* ¶ 13. The new railway would eliminate these trips, making transport safer and more efficient. *Id.* ¶¶ 11–12. Refineries have been increasing their capacity to handle waxy crude too, further improving the railway’s economic outlook. *Id.* ¶¶ 18–19. For all these reasons, the financial future of the Uinta Basin Railway is strong.

2. The Uinta Basin Railway advances policies related to public health, safety, and energy efficiency.

The D.C. Circuit also faults the Board for failing to consider what it labels “environmental policies” in section 10101. *Eagle Cnty.*, 82 F.4th at 1194–96.

That finding grew at least in part out of the court’s view of the EIS, *id.* at 1194—a view that the Supreme Court has now overturned. But the D.C. Circuit also found fault with the Board’s discussion of “energy conservation policy” (49 U.S.C. § 10101(14)), “public health and safety” (*id.* § 10101(8)), and “safe and suitable working conditions” (*id.* § 10101(11)). See *Eagle Cnty.*, 82 F.4th at 1190–91, 1194–95. Again, a better explanation on remand should resolve the court of appeals’ concerns.

At the outset, the D.C. Circuit found that the Board erred by “not evaluat[ing] the energy conservation policy” in its decision (a choice made at least in part because the Board found that no timely objections had been raised). *Eagle Cnty.*, 82 F.4th at 1194 & n.2. This alleged oversight is simple to fix. The Board has often held that construction of a new rail line fulfills the “energy conservation” policy by “supporting truck-to-rail diversions” that “increase energy efficiency across modes.” *Savannah Indus. Transp., LLC – Construction Exemption – In Effingham Cnty., Ga.*, STB Docket No. FD 36723, 2025 WL 2234811, at *4 (STB decided Aug. 4, 2025). The Uinta Basin Railway would do the same. Today, heated tanker trucks are carrying waxy crude on two-lane mountain roads to reach refineries and rail transload facilities. *Heaton V.S.* ¶ 13. The railway is designed to take many of those trucks off the roads, increasing both safety and energy efficiency. *Id.* ¶¶ 11–12. In so doing, the railway furthers the rail policy in section 10101(14).⁵

⁵ As discussed above, the Supreme Court made clear that “inherent in Board approval of railroad lines is the understanding that” railroads “cannot decline to provide ‘common carrier’ transport based on the product or commodity to be carried.” *Seven Cnty.*, 605 U.S. at 191 n.6. Thus, the “energy efficiency”

Next, the D.C. Circuit flagged section 10101(8) as one of the “environmental policies” that the Board did not adequately discuss. *Eagle Cnty.*, 82 F.4th at 1190–91, 1194. That policy reads in full: “In regulating the railroad industry, it is the policy of the United States Government ... to operate transportation facilities and equipment without detriment to the public health and safety.” 49 U.S.C. § 10101(8). From a textual perspective, this policy is hardly “environmental.” It is instead focused on “public health and safety” in “*operat[ion]* of transportation *facilities* and *equipment*.” *Id.* (emphasis added). “Public health” more broadly is not in view. The Supreme Court made a similar point in a covid vaccine mandate case, explaining that a statute focused on a specific health and safety concern—here, public health and safety in the operation of rail facilities and equipment—should not be read to “address[] public health more generally,” especially when such general health concerns “fall[] outside” the agency’s “sphere of expertise.” *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 595 U.S. 109, 117–18 (2022).

The Board’s decisions make clear the narrow scope of section 10101(8) by consistently emphasizing “safety concerns” and “compliance with FRA safety regulations” when evaluating that policy. *Am. Rocky Mountaineer, LLC – Petition for Exemption from 49 U.S.C. Subtitle IV*, Docket No. FD 36468, 2021 WL 2182295, at *4 (STB decided May 27, 2021); *see also Middletown & N.J. R.R., LLC – Lease & Operation Exemption – Norfolk S. Ry. Co.*, STB Docket No. FD 35412, 2011 WL 4429048, at *8 (STB decided Sept. 22, 2011) (emphasizing

policy in section 10101(14) cannot be read to include consideration of the product or commodity that the Uinta Basin Railway will carry.

“safety risk” and “unsafe operations”). The Board has also rejected efforts to expand this policy beyond the strict bounds of railroad “public health and safety.” See *Ken Tenn Regional Rail Partners, Inc. – Construction & Operation Exemption – In Fulton Cnty. Ky., & Obion Cnty., Tenn.*, STB Docket No. FD 36328, 2021 WL 3137176, at *5 (STB decided July 21, 2021) (noting that project opponents “had fail[ed] to demonstrate that their assertions [were] even related to public health and safety”). In short, the rail policy embodied in section 10101(8) is safety focused. It does not encompass broader environmental concerns like the ones raised by the D.C. Circuit.

The focus of the final “environmental policy” noted by the D.C. Circuit—section 10101(11)—is even narrower. That policy tells the Board “to encourage fair wages and safe and suitable working conditions in the railroad industry.” 49 U.S.C. § 10101(8). On its face, this policy has no environmental implications at all. Rather, as the Board has often said, section 10101(11) is about rail labor. See *Am. Rocky Mountaineer*, 2021 WL 2182295, at *5. Especially when “an exemption will not alter the applicability of the Railway Labor Act or the Railroad Retirement Act,” this policy goal is met. *Id.* And so it is here. Nothing in the record suggests that Uinta Basin Railway workers will receive unfair wages or face unsuitable working conditions. But to be sure the D.C. Circuit understands the scope of this policy, the Board should make such findings explicit.

In sum, none of the “environmental policies” identified by the D.C. Circuit are thwarted by the Uinta Basin Railway. Just the opposite. The railway will increase energy efficiency and cause no harm to public health and safety, all while providing the safe and suitable working conditions required by law.

3. The Uinta Basin Railway’s transportation benefits outweigh any alleged environmental harms.

The D.C. Circuit’s larger objection to the Board’s decision authorizing the railway rested on the premise that “[t]he Board was required not only to identify” environmental effects under NEPA, “but also to weigh them” under the ICC Termination Act. *Eagle Cnty.*, 82 F.4th at 1194. In the panel’s view, the Board’s “weighing” here was too “limited.” *Id.* at 1195. It accused the Board of “glossing over” the project’s supposed “significant potential for environmental harm” and “hurriedly dispos[ing] of” opponents’ “environmental objections.” *Id.* Still, the panel acknowledged that its “job” was not “to decide whether the Board ultimately arrived at the right outcome in light of its findings.” *Id.* On remand, the Board can both correct the D.C. Circuit’s faulty premises and better explain its “weighing” of environmental issues.

In terms of the Board’s responsibility to “weigh” environmental effects, it is essential to clarify the difference between the Board’s NEPA role and its consideration of the transportation merits. The Supreme Court’s decision in *Seven County* repeatedly emphasizes that “NEPA imposes no substantive environmental obligations or restrictions.” 605 U.S. at 173. Nor does NEPA “require the agency to weigh environmental consequences in any particular way.” *Id.* “Rather, an agency may weigh environmental consequences as the agency reasonably sees fit under its governing statute and any relevant substantive environmental laws.” *Id.* To the extent the D.C. Circuit implied otherwise, it was wrong.

Any weighing of environmental effects under the ICC Termination Act must start with the Act's pro-construction presumption. *See Mid States*, 345 F.3d at 552. Properly applied, that presumption means that the Board's transportation merits decision does *not* involve two sides of an evenly balanced scale, as the D.C. Circuit suggests. *See Eagle Cnty.*, 82 F.4th at 1195. The Board is instead guided by an underlying "permissive licensing standard" that accepts new rail construction projects as being "in the public interest unless shown otherwise." *Alaska R.R. Corp. – Construction & Operation Exemption – Rail Line Extension to Port MacKenzie, Alaska*, STB Docket No. FD 35095, 2011 WL 5857339, at *4 (STB decided Nov. 17, 2011). Beyond that, the Board must follow its rail transportation policy. *See* 49 U.S.C. § 10101. As already discussed, no part of that policy tells the Board to consider things like global greenhouse gas emissions, *compare Eagle Cnty.*, 82 F.4th at 1195, much less the effects of the cargo that may be carried on a new line.

Considered in this framework, the transportation benefits of the Uinta Basin Railway far outstrip its environmental costs. It is not enough to say, as the D.C. Circuit did, that "the Railway may open up new markets for crude oil transportation." *Eagle Cnty.*, 82 F.4th at 1195. It may do that, of course, and to that extent it would be consistent with "the policy of the United States" to "encourage energy exploration and production" and to "protect the United States' economic and national security and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State." Exec. Order 14154, 90 Fed. Reg. 8353 (Jan. 20, 2025). Equally important, the railway would be consistent with the Congressionally established rail transportation

policy, which encourages “effective competition” between rail and other modes of transportation. 49 U.S.C. § 10101(4), (5). Under this policy, which the Board is bound to follow, a new rail line is not just a benefit to a specific product being shipped, but to the entire transportation system, which works best with more competition. The people living in the Uinta Basin would benefit too, and that has always been the Coalition’s primary goal. A new rail line will make it easier to move goods in and out of an isolated part of Utah, improving the economy for everyone—including farmers, ranchers, manufacturers, and miners, not just oil producers. *Heaton V.S.* ¶¶ 19–20; *see Seven Cnty.*, 605 U.S. at 173 (noting that “the project would bring significant economic development and jobs to the isolated Uinta Basin”). Simply put, the new railway will improve lives.

The other side of the “ledger,” as the D.C. Circuit called it, involves a set of issues that lie largely outside the Board’s lane. Using an ultra-conservative “full-burn” analysis, the Board’s EIS predicted that if waxy crude shipments reach maximum estimates, they “could result in nearly one percent of total U.S. greenhouse gas emissions.” *Eagle Cnty.*, 82 F.4th at 1195. In reality, this level of greenhouse gas emissions will never happen.⁶ But even accepting the Final

⁶ The Final EIS’s greenhouse gas emission estimates are wrong for at least two reasons. First, “the highest use for Uinta Basin waxy crude oil is as feedstock for the manufacture of synthetic lube oil base oils,” meaning that much of the waxy crude shipped on the railway would never be burned. EI-30874, *Seven County Infrastructure Coalition DEIS Comments* at 11; *see Final Decision* at 17 (noting that waxy crude “could be refined into products other than fuel”). Second, any waxy crude oil that is refined for purposes of fuel would displace other crude oil now being used, thus resulting in no net increase in greenhouse gas emission. EI-30874 at 9–11; *see Final EIS* at 3.8-8, 3.15-37 (noting this displacement); *Final Decision* at 17 (explaining that Uinta Basin waxy crude

EIS’s worst-case scenario calculations, weighing the costs of greenhouse gas emissions is a job for Congress, not the Board—especially when nothing in the rail transportation policy suggests the Board should use its powers to block projects that might lead to increased emissions. *Compare West Virginia v. EPA*, 597 U.S. 697, 729–32 (2022) (finding it “highly unlikely that Congress would leave to agency discretion” the issue of emissions from coal-based power generation). And while questions like the risks of train-caused wildfires and downline spills from derailments may be nearer the Board’s regulatory wheelhouse, those risks are in fact small, better regulated by other agencies, and the product of a long causal chain. They cannot outweigh the new railway’s transportation benefits.

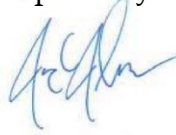
CONCLUSION

On remand, the Board should promptly respond to the issues in the D.C. Circuit’s original decision that were not addressed by the Supreme Court and reaffirm its decision authorizing the construction and operation of the Uinta Basin Railway.

“could displace other fuels from the market”). On remand, the Board should disclaim an unrealistic, worst-case scenario for greenhouse gas emissions.

Dated: November 13, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have this day, November 13, 2025, served copies of the foregoing document on all parties of record in this proceeding by email and first-class U.S. Mail.

/s Jay C. Johnson
Jay C. Johnson

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36284

**SEVEN COUNTY INFRASTRUCTURE COALITION –
CONSTRUCTION AND OPERATION – IN UTAH, CARBON,
DUCHESENE, AND UINTAH COUNTIES, UTAH**

VERIFIED STATEMENT OF KEITH HEATON

I, Keith Heaton, pursuant to 28 U.S.C. § 1746, do hereby state and declare as follows:

1. I am the Executive Director of the Seven County Infrastructure Coalition, a position I have held since 2022.
2. The Coalition is an independent, public, interlocal entity formed under the laws of Utah. Its members are Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties.
3. Each member county has a seat on the Coalition's Board. The Board holds meetings each month to conduct business.
4. The Uinta Basin Railway, which is sponsored by the Coalition, was fully approved by the Surface Transportation Board in December 2021.
5. In October 2025, the U.S. Court of Appeals for the District of Columbia Circuit remanded the Uinta Basin Railway project to the Surface Transportation Board without vacating the Board's December 2021 approval decision.
6. In May 2025, the Coalition's Board adopted resolution 2025.05A to authorize execution of a Memorandum of Inducement with Drexel Hamilton Infrastructure Fund II, LLC and its affiliates, including Uinta Basin Railway Holdings, LLC.

7. The purpose of the Board's resolution was to facilitate issuance of up to \$2.4 billion in private activity bonds that would help fund the construction, operation, and maintenance of the Uinta Basin Railway.

8. I understand that Congress allocates a set amount of funding for private activity bonds sponsored by the U.S. Department of Transportation. I also understand that DOT is expected to soon approve this funding for the Uinta Basin Railway.

9. Right now, demand for the waxy crude oil that exists in the Uinta Basin is high. But without a railroad, the only way for that oil to leave the basin is on heated-tanker trucks that travel the same roads as the people who live and work in the basin.

10. Since the Surface Transportation Board approved the Uinta Basin Railway in December 2021, demand for Uinta Basin waxy crude has kept growing. As a result, there are more trucks on the road today than there were when the railway was approved.

11. The trucks that carry waxy crude increase traffic in the basin, creating health and safety risks for the travelling public and increasing vehicle emissions.

12. One of the key benefits of the Uinta Basin Railway is that it will greatly reduce the number of tanker trucks on public roads. The longer it takes to reinstate the Surface Transportation Board's decision, the longer these harms to the public and the environment from tanker trucks will go on.

13. Today, the tanker trucks that haul Uinta Basin waxy crude take it either to refineries in Salt Lake City or to one of two rail transload facilities located on the existing Union Pacific rail line. Any of these trips is close to 100 miles long and involves travel on two-lane mountain roads.

14. When oil is taken to transload facilities on the existing Union Pacific rail line, it is put onto rail cars and shipped to refineries by BNSF or Union Pacific. Railroad

routing decisions are made and changed by the railroads, and those decisions are not publicly available. I have been told, however, that at least some trains travel north from the Uinta Basin through Utah, Wyoming, and Nebraska, bypassing the Colorado River corridor, on the way to refineries on the Gulf Coast. I have also personally seen trains carrying Uinta Basin waxy crude moving north through Utah.

15. The increased transportation of Uinta Basin waxy crude by truck reflects increased oil production in the basin.

16. When the Coalition filed its petition for an exemption to construct and operate the Uinta Basin Railway in May 2020, total daily waxy crude production in the Uinta Basin was around 60,000 barrels, according to an RBN Energy Report that draws on data from the Utah Division of Oil, Gas & Mining. That report is available online at <https://rbnenergy.com/daily-posts/blog/new-drill-down-report-waxy-crude-production-uinta-basin>.

17. The same RBN Energy Report, using the same Utah state statistics, shows that in May 2025, total waxy crude production in the Uinta Basin was over 170,000 barrels per day.

18. I understand that, in connection with this increased waxy crude production, refineries around the country have been increasing their capacity to process waxy crude oil.

19. The railway's cargo will not be limited to waxy crude oil. Because railroads are common carriers, the railway will handle cargo tendered to it by farmers, ranchers, manufacturers, and mining companies that operate in the Uinta Basin. It would also bring goods into the basin that today are brought in by truck, or not brought in at all.

20. For all these reasons, I am confident that the Uinta Basin Railway is going to be financially feasible. The opportunities to improve the Basin's economy are huge, and the Coalition's goal is to seize those opportunities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 22, 2025

/s/ Keith Heaton

Keith Heaton