House Transportation, Housing & Local Government

02/28/2024 01:30 PM

HB24-1030 Railroad Safety Requirements

Typed Text of Testimony Submitted

Name, Position, Representing	**Typed Text of Testimony**
Jared Petsche For Northwest Colorado Council of Governments Water Quality/Quantity	Dear Rep Froelich and Members of the Committee, I am Jared Petsche, representing the Northwest Colorado Council of Governments Water Quality/Quantity Committee (QQ), and I am writing to express our support for House Bill 1030. QQ comprises municipalities, counties, and water and sanitation districts in the headwaters region of Colorado, including Grand, Summit, Eagle, Pitkin, and Gunnison counties, as well as Steamboat Springs, Yampa, and Carbondale. Our committee is the sole entity among local governments in the state dedicated to safeguarding the water quality and quantity of Colorado's headwaters. The proposed legislation, HB24-1030, addresses critical safety requirements for railroads in our state. By establishing limits on train length, mandating the use of wayside detector systems, and restricting the duration of train crossings, the bill aims to enhance transparency, accountability, and safety in railroad operations. Our support for this bill stems from its potential to mitigate the risk of catastrophic spills, which we have observed in recent incidents. Such spills pose significant threats to our communities, including the potential loss of safe drinking water, environmental degradation, and adverse impacts on our state's recreation and tourism economy. Therefore, we urge you to support House Bill 1030 to ensure the continued well-being of our communities. Thank you for considering our perspective on this important matter. Please feel free to contact me if you require any further information.

	Sincerely, Jared Petsche Northwest Colorado Council of Governments Water Quality/Quantity Committee jpetsche@nwccog.org 720.837.5332

Good Afternoon Madam Chair, Members of the committee:

My name is Meghan Dollar and I am the SVP of Governmental Affairs speaking on behalf of the Colorado Chamber of Commerce. The Colorado Chamber represents thousands of individual businesses of all sizes and industries, 50 local chambers of commerce, 49 trade associations and several economic development organizations across the State. I am speaking in an Opposition position to HB24-1030 today. This position was taken by our Energy & Environment Council which is comprised of our members and businesses with an expertise on environmental policies, many of which impact transportation.

We want to support a thriving business community and a healthy economy. The Supply chain is key, and railroads play a vital role in sustaining America's economy by implementing strategic measures to maintain a consistent flow of freight within the complex global supply chain.

While we also support a safe freight delivery system, it's important to know the full impacts and we are not confident at this time that the actual impacts to the supply chain have not been contemplated. The bill will not just impact commodities that are considered hazardous. As an example, many of our members need raw materials and finished materials to operate and anything that may impact the movement of those materials could put Colorado at a disadvantage in comparison to other states.

With that, I will conclude my testimony and ask for your NO vote on HB24-1030.

Thank you,

February 27, 2024

Rep. Meg Froelich, Chair
House Committee on Transportation, Housing & Local Government
200 E. Colfax, Room 307
Denver, CO 80203

Re: Support HB24-1030, Rail Safety Legislation

Chair Froelich:

On behalf of the Center for Biological Diversity, I submit this testimony in support of HB24-1030, the Rail Safety Act.

I will focus not on the "what" or "how" of this bill (which are important questions), but on the "why." There is a critical need for action to improve rail safety in Colorado because oil drillers and their supporters in Utah intend to send a huge and unprecedented volume of crude oil along the Union Pacific line across our state in the coming years, and have already begun to send significant volumes of that hazardous material.

Using Utah state taxpayer funds, oil industry supporters plan to build an 88-mile rail line in that state to enable oil producers to ship up to 315,000 barrels a day – 4.8 billion gallons a year – on 10,000-foot-long trains through Colorado toward refineries on the Texas/Louisiana Gulf Coast.[1]

A federal agency's environmental impact statement (EIS) concluded that loaded rail cars will travel the Union Pacific line through Grand Junction, Palisade, and along the Colorado River for 100+ miles, including through Glenwood Canyon, to Granby, then through the Moffat Tunnel, along South Boulder Creek and into Denver. About five, fully-loaded oil trains, each nearly two miles long, would cross the state every day for years (and five empty trains would return to Utah), using up about half of the capacity of the Moffat Tunnel. The EIS also predicted that train accidents along the Union Pacific line between Utah and Denver would double as a result of the Uinta Basin Railway's oil cargo, and involve up to roughly one loaded oil train annually, and one spill every four year. But even those figures likely underestimate the risks. The D.C. Circuit Court of Appeals' decision vacating federal approvals for the Railway found that the EIS failed to consider several risk factors in transporting the oil through Colorado.

While trains have pulled a variety of freight along the Colorado River for decades, the oil transported via the Uinta Basin Railway and the Union Pacific line through Colorado would represent a massive expansion of hazardous materials traffic. A 2023 Denver study concluded

[1] Chase Woodruff, Down the Line: Tracing the route — and risks — of Utah's proposed Colorado-bound oil trains, Colorado Newsline (June 25, 2023), available at https://coloradonewsline.com/2023/06/25/down-the-line-tracing-the-route-and-risks-of-utahs-proposed-colorado-bound-oil-trains/.

that the Uinta Basin Railway would result in *nearly tripling* the number of rail cars carrying hazardous materials through the city.[2] Energy Information Administration data shows that the volume of oil transported through Colorado due to the Uinta Basin Railway will be more than *all oil transported in rail cars throughout the entire United States in 2022*.[3]

Which begs the question: what happens when there's an accident that sends oil into the Colorado River, South Boulder Creek, or other stream along the rail line? It would be helpful to have some data about that, but the federal agency that reviewed the Uinta Basin Railway proposal, the Surface Transportation Board, failed to even address this issue in its EIS. It's another reason why the U.S. Court of Appeals concluded that the Board violated the National Environmental Policy Act.[4]

What information that can be gleaned from public agency reports about truck crashes and other data demonstrates the need for increased safety measures to reduce the likelihood of spills.

First, Uinta Basin waxy crude – the oil that would be transported – is toxic. Material data sheets warn that these substances are flammable, that they may cause genetic defects, that they may cause cancer, and that they may cause damage to organs through prolonged or repeated exposure.[5] We don't want this ending up in Colorado's rivers and streams.

Second, a review of the few case studies on public agency websites of even small spills of Uinta Basin crude from tanker trucks demonstrate that such spills:

- have been time-consuming and costly to clean up;
- have required diverting or reducing water flows, forcing downstream users to limit their uses or to seek alternate water sources; and
- have been complicated by weather, including cold snaps and rain events.

Three examples follow.

The 2018 Price River spill is addressed in Colorado Newsline's article, "The Canyons: Oil and water could mix in Colorado River country known for its beauty, fragility," by Chase Woodruff (June 28, 2023):

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[2] HTNB, Freight Rail Study for the City and County of Denver (April 2023), available at https://www.cbsnews.com/colorado/news/catastrophic-hazmat-incident-denver-highly-likely-new-study/.

[3] Chase Woodruff, The Valley: In Grand Junction, oil train route would retrace Colorado railroad history, C*olorado Newsline* (June 26, 2023), available at https://coloradonewsline.com/2023/06/26/down-the-line-grand-junction-uinta-basin-colorado/.

[4] *Eagle County, Colorado v. Surface Transportation Board,* Dkt. No 22-1019 (D.C. Cir. Aug. 18, 2023).

[5] Ovintiv Safety Data Sheet, Black Wax Crude Oil, available at https://www.ovintiv.com/wp-content/uploads/2019/10/black-wax-crude.pdf; Ovintiv Safety Data Sheet, Yellow Wax Crude Oil, available at https://www.ovintiv.com/wp-content/uploads/2019/10/yellow-wax-crude.pdf.

> "To date, reported spills of Utah's waxy crude have largely been limited to tanker-truck crashes that released relatively small amounts of oil. But even those incidents complicate railway proponents' characterization of the oil as easy to clean up.
>
> "In 2018, a truck hauling heated waxy crude from the Uinta Basin overturned on a bridge over the Price River near Carbonville, Utah, spilling roughly 4,000 gallons. Although fewer than 1,000 gallons [24 barrels] were estimated to have spilled into the river itself, the crude oil "formed quarter-size to fist-sized waxy globules scattered along (a) three-mile stretch of river from the crash site," Utah's Department of Environmental Quality reported. A series of flash floods in the days after the crash knocked out containment booms and sent the oil even farther downstream, with "significant contamination" ending five miles from the crash, the DEQ said."

The article relies on Utah DEQ's press release on the spill. The DEQ webpage includes photos showing cleanup personnel wading into the Price River to address the 2018 spill there. The river appears to be about 3 feet deep and maybe 20 feet across (*see* DEQ photo below). A brief EPA report states: "Approximately 98% of the water above the spill location [was] routed around the spill and returned to the river below a second set of booms."

Price River Spill. Utah Dep't of Environmental Quality captions: (L) "Oil globules form on rocks;" (R) "Emergency crews set up absorbent booms to trap oil before it heads downstream."

The 2015 Provo River spill, according to an EPA summary, resulted in about 1,000-1,500 gallons of oil (up to 36 barrels) entering the water following a truck crash. EPA indicates that cold weather and "quick thinking" probably prevented the oil from entering an intake for the drinking water supply for Orem, Provo, and Salt Lake City; the water provider closed the intake and switched to alternate water sources during the cleanup. A boom "appears to have successfully captured *much* of the oil" (emphasis mine). EPA reported: "Because of the cold weather conditions, the oil is congealing into soft solid chunks on the ground and in the Provo River behind the collection boom." A more detailed EPA report states that the water intake was closed for six days, and that it was almost two weeks later, "[d]uring a brief warming period," that "crews were able to collect oil that had been stranded in ice." EPA reported that "[t]he boom will remain in place through Spring 2016 to collect any oil that might have been stuck in the ice or vegetation," indicating the months-long nature of the response.

Provo River spill. EPA captions read: (L) "Collecting oil along the bank by the spill site. Much of the congealed oil can be removed by hand;" (R) "Snow-covered crude oil successfully collected by the boom at the Diversion [Dam]."

The 2010 Strawberry River spill. EPA also describes a 2010 incident near Duchesne City, Utah where an "unknown party discharged up to 40 barrels [1,700 gallons] of crude oil from a truck, likely with some amount of produced water" into the Strawberry River just upstream of its confluence with the Duchesne River. "The dumped product appears to be a heavy, waxy crude." A local irrigation district reduced the River's flow by nearly 90%, down to 15 cubic feet per second, to facilitate the cleanup. "The contamination has left oily residues along the riverbank at the original elevation of the river and crews are working to clean up this oiled vegetation and globules of crude." An EPA PowerPoint describing the response states that recovering 10-12 barrels of oil required "10 days of response, which cost almost $500k." EPA's decision to reduce flows in the river led the Utah State Engineer's office to complain that the action could constitute a 'taking' of downstream water rights. An EPA situation report further described the cleanup:

> Given the viscous nature of the crude oil spilled, the delicate river ecosystems impacted by the spill, the concerns for threatened and endangered species in the impacted areas, and the concerns expressed by downstream water right holders, the response was focused on recovering as much discharged oil as possible without causing significant additional harm to the natural resources and habitat of the Duchesne and Strawberry Rivers or the surrounding community.

Photos from the EPA report follow:

Strawberry River spill. EPA's report captioned both photos: "Oiled vegetation in the Strawberry River."

Strawberry River spill. From EPA's 2010 PowerPoint presentation.

These three incidents for which EPA and the State of Utah has reports involved relatively small spills (less than 40 barrels of oil in each) into relatively small water bodies, where booms were easily placed across the river and/or streams.

It is thus likely that a large spill (of a tanker car or more) of waxy crude into a larger, faster stream (such as the Colorado River) would be much more costly to clean up and more harmful to the environment.

Conclusion. The Uinta Basin Railway will result in a massive increase in the volume of oil travelling on rail cars through Colorado. The General Assembly should act to ensure that the threats of damaging accidents are reduced to as close to zero as possible. By requiring shorter trains, the installation of wayside detectors, and authorizing the public utilities commission to impose fines for certain violations, HB24-1030 will help protect Colorado's communities, wildlife, waters, and ecosystems from such accidents.

We urge the Committee to approve HB24-1030. Thank you for your attention to this issue.

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February 7, 2024

Rep. Meg Froelich, Chair
House Committee on Transportation, Housing & Local Government
200 E Colfax, Room 307
Denver, CO 80203

Re: Support HB24-1030, Rail Safety Legislation

Chair Froelich:

On behalf of the undersigned groups, we support HB24-1030, legislation to improve rail safety.

Rail transportation can be a fuel efficient, less polluting, and more cost-effective way to move freight and passengers, and can play a critical role in supporting more efficient passenger travel across Colorado.

We must ensure that such transportation is safe, and protects rail workers, communities, and our environment, as underscored by last year's disaster in East Palestine, Ohio, and the October 2023 derailment of a coal train near Pueblo that killed a truck driver and closed I-25.

Despite media attention and public outcry in the wake of the East Palestine disaster just over one year ago, train accidents nationwide have increased, not decreased.[1] And the U.S. Congress has failed to act on rail safety legislation.

We're therefore pleased to see the Colorado legislature propose necessary action.

The need for action is especially urgent because Utah producers are undertaking two projects to increase oil production in the Uinta Basin, and to ship that oil through Colorado.

First, Utah oil boosters have proposed to construct the Uinta Basin Railway, which will be built entirely in Utah but will enable oil producers to ship up to 315,000 barrels a day – 4.8 billion gallons a year – on 10,000-foot-long trains through Colorado toward refineries on the Texas/Louisiana Gulf Coast.[2]

According to the proponent's plan, rail cars will travel the Union Pacific line through Grand Junction, Palisade, and along the Colorado River for 100+ miles, including through Glenwood Canyon, to Granby, then through the Moffat Tunnel, along South Boulder Creek and into Denver. About five, fully-loaded oil trains, each nearly two miles long, would cross the state every day for years (and five empty trains would return to Utah).

[1] Peter Eavis, Since Ohio Tains Derailment, Accidents Have Gone Up, Not Down, *The New York Times* (Jan. 28, 2024), available at https://www.nytimes.com/2024/01/28/business/ohio-train-derailment-safety-east-palestine.html.

[2] Chase Woodruff, Down the Line: Tracing the route — and risks — of Utah's proposed Colorado-bound oil trains, Colorado Newsline (June 25, 2023), available at https://coloradonewsline.com/2023/06/25/down-the-line-tracing-the-route-and-risks-of-utahs-proposed-colorado-bound-oil-trains/.

While trains have pulled a variety of freight along the Colorado River for decades, the oil transported via the Uinta Basin Railway and the Union Pacific line through Colorado would represent a massive expansion of hazardous materials traffic. A 2023 Denver study concluded that the Uinta Basin Railway would *nearly triple* the number of rail cars carrying hazardous materials through the city.[3] Energy Information Administration data shows that the volume of oil transported through Colorado due to the Uinta Basin Railway would be more than *all oil transported in rail cars throughout the entire United States in 2022*.[4]

And make no mistake: the oil carried from Utah is dangerous. Hazardous material data sheets for the cargo these oil trains would carry – black waxy Uinta crude and yellow waxy Uinta crude – warn that these substances are flammable, that they may cause genetic defects, that they may cause cancer, that they may cause damage to organs through prolonged or repeated exposure.[5] A 2021 federal agency environmental impact statement assessing the Railway's impact and acknowledges that "waxy crude oil may persist in the environment for a longer time relative to other non-waxy crude oil."[6] When a tanker truck dumped just 40 barrels of Uinta Basin oil into a small Utah river in 2010, EPA reported that it took 10 days and nearly $500,000 to clean up the oil-soaked vegetation on streambanks.[7] Each trainload from the Uinta Basin will haul tens of thousands of barrels of oil.

Clean-up of accidents in steep, remote canyons that have no road access, where the rail line is directly adjacent to the Colorado River, as in Gore Canyon, would be extremely difficult.

Fortunately, a recent federal court decision has put the Uinta Basin Railway project on hold for now, in large part because federal agencies failed to disclose the impacts of hauling the hazardous material through Colorado.[8]

But Utah oil producers have a second plan: they are seeking to truck up to 260,000 barrels a day from the Uinta Basin to rail transloading facilities in Utah to effectively replace 75% of the Uinta Basin Railway's oil-carrying capacity. Tens of thousands of barrels a day are already being shipped along the Colorado River through Denver on the Union Pacific line.

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[3] HTNB, Freight Rail Study for the City and County of Denver (April 2023), available at https://www.cbsnews.com/colorado/news/catastrophic-hazmat-incident-denver-highly-likely-new-study/.

[4] Chase Woodruff, The Valley: In Grand Junction, oil train route would retrace Colorado railroad history, C*olorado Newsline* (June 26, 2023), available at https://coloradonewsline.com/2023/06/26/down-the-line-grand-junction-uinta-basin-colorado/.

[5] Ovintiv Safety Data Sheet, Black Wax Crude Oil, available at https://www.ovintiv.com/wp-content/uploads/2019/10/black-wax-crude.pdf; Ovintiv Safety Data Sheet, Yellow Wax Crude Oil, available at https://www.ovintiv.com/wp-content/uploads/2019/10/yellow-wax-crude.pdf.

[6] Surface Transportation Board, Uinta Basin Railway Final Environmental Impact Statement (2021) at Ch. 3.3, page 3.3-30, available at https://icfbiometrics.blob.core.windows.net/uinta-basin/03_03_Water_Resources_FEIS.pdf.

[7] EPA, Duchesne Oilfield Dumping Incident, Sep. 24-Oct. 6, 2010, available at https://response.epa.gov/sites/6383/files/Duchesne%20Incident%20Overview.ppt

[8] *Eagle County v. Surface Transportation Board*, 82 F.4th 1152 (D.C. Cir. 2023).

The time to protect the Colorado River – and the recreation and agricultural economy that rely on clean water – as well as Colorado communities from this flood of oil on rails is now, *before* a significant accident occurs. HB24-1030 would make a good start at doing that.

The bill's provisions would protect Colorado's communities, ecosystems, and rivers by improving safety (limiting the length of unit trains, requiring the use of technologies to detect defects that can lead to accidents), assisting communities in preparing for inevitable accidents, empowering union members to report safety violations, and ensuring that railroads have the insurance necessary to cover the costs of catastrophic accidents.

We therefore urge members of this committee to support HB24-1030.

Thank you.

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Great Western Railway of Colorado, L.L.C.'s Opposition to Colorado House Bill 24-1030

Great Western Railway of Colorado, L.L.C. ("GWR") writes in opposition to Colorado House Bill 24-1030. GWR is a Class III shortline operating over 80 miles of track to provide vital transportation services to its customers and the Colorado and North American economies. The proposed legislation would unreasonably interfere with current and future railroad operations. GWR also has concerns whether shorter trains resulting in additional rail traffic will have the effect of promoting and safeguarding the public.

In addition to GWR's general opposition to HB 24-1030, the proposed legislation would pose an undue burden on interstate commerce and is otherwise preempted under federal law. The federal government has a comprehensive scheme of regulations governing railroad safety under the Federal Railroad Safety Act ("FRSA"), 49 U.S.C. §§ 20101-20144. The FRSA was enacted "to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents." 49 U.S.C. § 20101. In furtherance of this goal, the FRSA empowers the Secretary of Transportation to "prescribe regulations and issue orders for every area of railroad safety …" through the Federal Railroad Administration ("FRA"). 49 U.S.C. § 20103(a); 49 C.F.R. § 1.49. The FRSA only permits state regulation related to railroad safety if: (1) the Secretary of Transportation has not yet regulated the subject matter of the state regulation; or (2) the regulation (i) is necessary to eliminate an essentially local hazard, (ii) does not conflict with federal law, and (iii) does not unreasonably burden interstate commerce. *CSX Transportation Inc. v. City of Plymouth*, 283 F.3d 812, 815 (6th Cir. 2002). *See also* 49 U.S.C. § 20106.

Hazardous material is already regulated by the Secretary of Transportation. Under 49 U.S.C. § 5103(b), the Secretary is vested with prescribing regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. In addition, a limitation on the amount of time in which a train can occupy a crossing will likely overstep other federal regulations, such as performing brake checks on trains. Even if the FRA has not specifically placed requirements of certain equipment, i.e. hot bearing detectors, dragging equipment detectors, locations of wayside detectors, etc. does not necessarily suggest that it is beyond the scope of their regulatory authority. *See also Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 178 (1978) ("'where failure of … federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or appropriate pursuant to the policy of the statute,' States are not permitted to use their police power to enact such regulation."). In addition, the proposed legislation is not "necessary to eliminate an essentially local hazard" where, as here, it is adequately encompassed within uniform national standards. *See Norfolk & Western Ry. Co. v. Pub. Utils. Comm'n of Ohio*, 926 F.2d 567, 571 (6th Cir. 1991); *Nat'l Ass'n of Regulatory Util. Comm'rs v. Coleman*, 542 F.2d 11, 14-15 (3d Cir. 1976) ("exception was designed instead to enable the states to respond to local situations which are not statewide in character and not capable of being adequately encompassed within uniform national standards."). Furthermore, state law which attempts to limit the length of trains necessarily imposes a serious burden on interstate commerce and is preempted by the Commerce Clause. *See S. Pac. Co. v. Arizona*, 325 U.S. 761 (1945).

For these and other reasons, GWR opposes HB 24-1030.