

No. 23-975

In the Supreme Court of the United States

Seven County Infrastructure Coalition, et al.,
Petitioners,

v.

Eagle County, Colorado, et al.,
Respondents,

On Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit

**Brief of the State of Utah as Amicus Curiae
Supporting Petitioners**

Sean D. Reyes
Utah Attorney General
Stanford E. Purser
Utah Solicitor General
Counsel of Record
Office of the Utah
Attorney General
160 E. 300 S., 5th floor
P.O. Box 140858
Salt Lake City, UT 84114-0858
(385) 382-4334
spurser@agutah.gov

*Counsel for Amicus Curiae
State of Utah*

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Interest of Amicus Curiae

Amicus Curiae is the State of Utah. The State has significant interest in economic development opportunities for its more rural counties. The Uinta Basin Railway project (Railway or Project) offers just such an opportunity. Utah state and federal officials strongly support this Project for a variety of reasons, from economic to environmental to safety.

Petitioners give the legal reasons why the Court should reverse the D.C. Circuit's decision. The State agrees. But in Utah, this case affects far more than clarifying precedent and resolving circuit splits. The Railway will help thousands of Utah residents, various local governments, and the State itself. So Utah submits this amicus brief to highlight how important the Railway is to, and the positive impacts it would have on, the affected counties, the State, and its residents.

Introduction and Summary of Argument

Despite its wealth of natural resources, Utah's Uintah Basin has been a relatively underdeveloped region in Utah for decades. *See* CA JA1304-05. That's because, at least in part, the only access points to the Basin are two-lane roads that present freight transportation challenges. So for years, the Seven-County Infrastructure Coalition (Seven County) has championed the Railway: an over 80-mile rail line that would connect the Basin with the national rail network and unlock the region's economic potential. *See, e.g.*, JA106. Utah's leaders at the state and federal level have voiced their support for the Project. *See, e.g.*, CA JA245, CA JA540-41, CA JA796-97.

In December 2021, after a long regulatory process, the Surface Transportation Board issued its final

approval of the Railway. The STB had considered the Project's transportation merits, conducted a thorough and reasoned review under the National Environmental Policy Act of the Project's reasonably foreseeable environmental effects falling within the STB's purview per *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), received voluminous public comments, and imposed extensive mitigation measures to reduce the Project's environmental impact. See generally Pet. App. 83a-123a; see also *id.* at 108a (discussing *Public Citizen*). The STB found that the Project advanced important transportation benefits that outweighed mitigated environmental impacts. Pet. App. 122a. The STB therefore exercised its discretion under the Interstate Commerce Commission Termination Act—which promotes railway development for the public good—and approved the Project. *Id.*; see 49 U.S.C. § 10101 (stating federal policy in regulating railroad industry).

On appeal, the D.C. Circuit took a different view of NEPA's scope. The circuit court determined, in part, that the STB's analysis was inadequate because it did not weigh speculative environmental impacts the Railway might cause upstream or downline in other parts of the country and over which the STB had no regulatory authority. See, e.g., Pet. App. 36a-37a, 66a-68a, 70a. The court said the STB's position "that it need not consider [environmental] effects it cannot prevent is simply inapplicable" because the STB can weigh whether a "railway's anticipated environmental and other costs outweigh its expected benefits." *Id.* at 37a.

The D.C. Circuit's take on NEPA's requirements is wrong. Pet. Br. at 19-49; Fed. Resp. Br. at 39-45. This Court should reverse. But even beyond the D.C. Circuit's legal error, the decision overlooks the

many benefits the Railway will bring to Utah, the Uintah Basin, and its residents. Utah files this amicus to explain why this Project matters to the State and its residents.

Argument

The State of Utah has championed the Railway from the beginning because it will promote the development of local and statewide economies and improve the lives of Utahns. *See, e.g.*, CA JA245. The Railway will provide critical infrastructure facilitating the flow of commodities to and from the Uintah Basin. It has the potential to open the region to entirely new markets that rely on freight shipping and to create jobs. And it will do so while protecting the environment and Utah's transportation workers. Blocking the Project stifles economic, environmental, and safety improvements in the region and hurts area residents. The State of Utah urges this Court to view the Railway as a vital investment in critical infrastructure that will benefit the Uintah Basin, the State of Utah, its residents, and the Ute Tribe. Projects like the Uinta Basin Railway realize the policies that promote the importance and development of the rural American economy.

I. The Railway promotes the development of strong and diverse economies in some of Utah’s most economically fragile counties.

The STB concluded that the Project would provide an alternative, more cost-effective method of transportation for shippers that are currently limited to shipping by truck. Pet. App. 119a. This, in turn, would eliminate longstanding transportation constraints, allow entry into new markets, help diversify Uintah Basin economies, and create more jobs—all of which advance Rail Transportation Policy factors that the STB must consider. *See* 49 U.S.C. § 10101(2), (4), (5) & (7). And the STB was right.

Carbon, Uintah, and Duchesne counties—in which the Railway would be located—all rank in the bottom half of Utah counties in terms of per capita income. Utah Econ. Council, *Econ. Rep. to the Governor* at 47 (2021).¹ They’re also some of the least economically diverse counties in Utah, despite Utah’s high marks for statewide economic diversity. *See* DJ Benway, *Measuring Econ. Diversity: The Hachman Index, 2018* (Kem C. Gardner Policy Institute Apr. 2020)²; *see also* CA JA1304-05. To build a new rural economy in the region, significant investment will be needed, including investments in strategic infrastructure. As the STB recognized, the Railway has the potential to advance many rail policy objectives by addressing

¹<https://gardner.utah.edu/wp-content/uploads/ERG2021.pdf?x71849>.

²<https://gardner.utah.edu/wp-content/uploads/Hachman-Brief-Apr2020.pdf#:~:text=Salt%20Lake%2C%20Weber%2C%20Davis%2C%20and%20Washington%20counties%20are,level%2C%20shows%20the%20economic%20disparity%20of%20Utah%E2%80%99s%20counties.>

these problems. *See* Pet. App. 119a-121a. The Railway likely “will boost economic opportunity and local job creation by allowing energy, agricultural, mining products, and manufactured goods, to reach global markets more easily.” CA JA796. Businesses that rely on shipping by freight will be able to open locations in the previously inaccessible region, which has the potential to open new markets and create jobs. *See* 49 U.S.C. § 10101(2), (4), (5) & (7).

These developments will also provide substantial economic benefits to the Ute Indian Tribe of the Uintah and Ouray Reservation, which also supported the project. JA546-47 (Ute Tribe noting that “[o]il and gas production on the reservation is the most significant source of revenue for the Ute Indian Tribe” and urging the STB to “move swiftly with final approval and issuance of license”). This Railway promises to bring tremendous economic opportunities to the people of Carbon, Uintah, and Duchesne counties. All three counties have been vocal proponents of the Railway. CA JA582 (“Carbon County believes that the Uinta Basin Railway project will fill a gap in major infrastructure that will help develop and diversify the regional economy.”); CA JA579 (“The Duchesne County Commission believes that the Uinta Basin Railway project will fulfill a critical infrastructure need. The railway is anticipated to help diversify the regional economy as businesses needing rail access would then be able to consider locations in the basin.”); CA JA593 (noting Uintah County has sought a “standard-gauge freight-only railway into the Uinta Basin” that would connect the community “to the national railway network” since the county released its 2017 General Plan (internal quotation marks omitted)).

The Project and its supporters are trying to do more than pay lip service to the importance of building rural economies. The STB’s analysis and final approval recognized the importance of these benefits and properly weighed them in favor of approval. Pet. App. 119a-121a. The D.C. Circuit did not.

II. The Railway will unlock the Uintah Basin’s economic potential while protecting the environment and promoting safety.

The Uintah Basin “is rich in natural resources including hydrocarbons, phosphates, and other minerals critical to America’s economy—but the development of these resources has long been impaired by the lack of quality freight transportation infrastructure.” CA JA1304. Currently, the region’s industry depends on trucks to transport products in and out of the area. CA JA579. By investing in freight rail infrastructure, this Railway offers to break that dependence, which has “hampered the economic vitality of the area and presents a considerable obstacle to diversifying future growth, increasing transportation safety, and reducing congestion.” CA JA796. Businesses that rely on rail access will be able, for the first time, to consider locations in the Uintah Basin. CA JA579.

Importantly, the Project will advance these economic objectives while promoting safety in transportation and reducing overall emissions related to transporting goods in and out of the Uintah Basin. 49 U.S.C. § 10101(3), (5), (8), (14). Transporting freight by rail instead of by truck would significantly decrease greenhouse gas emissions from the Uintah Basin’s industry. Ass’n of Am. R.R., *The Positive Env’t Effects of Increased Freight by Rail Movements in America* at 3 (June 2020) (“If 25% of the truck traffic moving at

least 750 miles went by rail instead, annual fuel savings would be some 1.2 billion gallons and annual greenhouse gas emissions would fall by approximately 13.1 million tons,” and “[i]f 50% of the truck traffic moving at least 750 miles went by rail instead, annual fuel savings would be approximately 2.3 billion gallons and greenhouse gas emissions would fall by approximately 26.2 million tons.”).³ Freight rail’s fuel efficiency in the United States has been increasing for nearly four decades straight. *Id.* at 4 (“U.S. freight rail volume is higher than it used to be, but railroad fuel consumption is much lower. In 2019 alone, U.S. freight railroads consumed 656 million fewer gallons of fuel and emitted 7.3 million fewer tons of carbon dioxide than they would have if their fuel efficiency had remained constant since 2000.”). Today, rail is the most fuel-efficient way to move freight over land. Ass’n of Am. R.R., *Freight Rail & Climate Change* (updated Feb. 2024).⁴ As a result, “moving freight by rail instead of truck lowers greenhouse gas emissions by up to 75%, on average[.]” *Positive Env’t Effects*, supra, at 1.

Shipping freight by rail instead of by truck is not only better for the environment, it’s safer for industry employees and Utah drivers. Because a single train carries the freight of hundreds of trucks, moving freight by rail instead of by truck takes trucks off the roads, easing congestion for individual drivers. *Positive Env’t Effects*, supra, at 3. Railways are also safer

³<https://www.aar.org/wp-content/uploads/2020/06/AAR-Positive-Environmental-Effects-of-Freight-Rail-White-Paper-62020.pdf>.

⁴<https://www.aar.org/wp-content/uploads/2021/02/AAR-Freight-Rail-Climate-Change-Fact-Sheet.pdf>.

for employees—the employee injury rate in trucking and many other industries is higher than that in rail. Ass’n of Am. R.R., *Freight Rail Emp. Safety* at 1 (updated Mar. 2024).⁵ And the employee injury rate in rail has been trending downward to an all-time low in 2023. *Id.*

III. Federal overregulation ignores States’ interests and stunts development.

The STB recognized a fundamental point that the D.C. Circuit did not. “Oil and gas development [was] not part of” the proposed agency action—railway approval—before the STB and would be “subject to the approval processes of other federal, state, local, and tribal agencies.” JA 522. By pushing NEPA review well past its legal and logical limits, the D.C. Circuit’s decision seemingly presumes that only the federal government and its myriad agencies care about the environment. Nothing could be further from the truth. And this paternalistic view ignores Utah’s sovereign interests and needlessly stymies development.

First, Utah’s interest in economic development in no way negates the State’s ongoing environmental interests. Utah’s leaders and residents have a vested interest in a healthy environment: they live here, work here, recreate here, raise families here, and invite the world to come share the State’s world-class scenery, skiing, hiking, fishing, rock-climbing, mountain-biking, and state and national parks, among many other outdoor activities. No one—including federal bureaucrats located far away in Washington,

⁵<https://www.aar.org/wp-content/uploads/2023/11/AAR-Railroad-Workplace-Safety-Fact-Sheet.pdf>.

D.C.—has more interest in Utah’ environment than Utahns.

That’s why Utah regulates oil and gas activity in the State, including: drilling; well completion, operation, and maintenance; construction; recovery techniques; and remediation activities. Utah Code §§ 40-6-2.5(1), -5(3)(a). To that end, the Utah Board of Oil, Gas, and Mining has promulgated comprehensive regulations governing well locations, well permitting, pre-drill evaluations, drilling operations, well control, well testing and inspections, fire hazards, and pollution and surface damage control. *See, e.g.*, Utah Admin. Code R649-3-1 to -19. Operators must reasonably guard against—including taking specified minimum steps to prevent—polluting lands, streams, reservoirs, natural drainage ways, and underground water ways. *Id.* R649-3-15(1). They must also maintain the property with “due regard” for its preservation and conservation and for “the health and safety of employees and people residing in close proximity.” *Id.* R649-3-15(1.1). And the wells remain subject to inspection to ensure compliance with the regulations. *Id.* R649-3-17; *see also* Utah Code § 40-6-16(1).

Beyond the oil and gas laws and rules, oil and gas operations are subject to Utah’s Air Conservation Act, Utah Code § 19-2-101 to -304, which is meant to achieve and maintain air quality levels that “protect human health and safety” and “prevent injury to plant and animal life and property,” *id.* § 19-2-101(2). Under the Act’s authority, the Utah Air Quality Board has enacted comprehensive regulations governing oil and natural gas exploration, production, and transmission, and well production facilities. Utah Admin. Code R307-501-3; *see also id.* R307-501 to R307-511 (regulations governing pneumatic controllers, flares, tank truck loading, registration requirements, storage

vessels, dehydrators, VOC control devices, leak detection and repair, natural gas engine requirements, and associated gas flares).

Similarly, oil and gas operators (like any other Utah industry) must abide by Utah's Water Quality Act, which prohibits (1) discharging pollutants into state waters; (2) causing pollution "which constitutes a menace to public health and welfare, or is harmful to wildlife, fish, or aquatic life, or impairs domestic, agricultural, industrial, recreational, or other beneficial uses of water"; or (3) placing "waste in a location where there is probable cause to believe it will cause pollution." Utah Code § 19-5-107(1)(a).

Given Utah's (and other States') own environmental regulations, based on their own sovereign interests and knowledge of their own State's needs and circumstances, there's simply no justification for the D.C. Circuit's overextension of NEPA review. The STB already produced an exhaustive 3,600-page environmental impact statement under NEPA—all for a relatively short 80-plus mile proposed railway in a rural and remote part of Utah. Pet. Br. at 11. That more than satisfies NEPA's goal to ensure agencies make environmentally informed decisions. *Id.* at 4. Requiring even more analysis of speculative impacts in other parts of the country ignores and intrudes on each State's sovereign interests in their own environmental regulations.

Second, federal overregulation delays, if not kills, much-needed development. A recent news article highlighted just a few of the problems various types of projects face in dealing with federal regulators. Amy Joi O'Donoghue, *What's up with delays on projects on federal lands?* Deseret.com (May 27,

2024).⁶ Everyone recognizes the benefits from and need for diverse energy sources. But “[d]espite being a carbon free and abundant source of energy in Utah, tapping geothermal resources working through the Bureau of Land Management is likened by some in the industry as a nagging, painful canker sore that presents no cure.” *Id.* One company nominated BLM controlled land for geothermal exploration in 2008 and completed an environmental assessment more than seven years ago, but still can’t move forward. *Id.* Other companies nominated BLM land for geothermal exploration, spent years on technical due diligence, including time and capital, and had planned on more capital expenditures, only to have BLM abruptly announce that it was deferring leasing the land until late 2025. *Id.* The federal delays and inconsistencies in Utah push geothermal developers to other states. *Id.*

Oil and gas producers are also finding it difficult to lease land from federal regulators. One industry representative explained that “You can be held up for years waiting for a lease to come up and then let’s say if it does, if it is litigated—which almost all of them have been since 2016—then you can have the BLM saying well, we’re uncertain what this litigation is going to look like so we’re just going to hold up your application to drill permit.” *Id.*

The TransWest Express high-voltage transmission line, crossing parts of four states including Utah, likewise faced inexplicable delay. It took nine years to get right-of-way approvals, then another five years to complete right-of-way requirements to move forward with construction. *Id.*

⁶<https://www.deseret.com/utah/2024/05/27/whats-up-with-delays-on-projects-on-federal-lands/>.

And it remains uncertain whether a long planned four-mile, four-lane highway will be built in southern Utah. Federal agencies granted approval to proceed in 2021. But conservation groups sued over the project and, as part of a settlement in that suit, the federal agencies announced they would revisit the highway's approval and conduct a new review. *Id.* All this has left state and federal leaders wondering what transportation needs can be realistically satisfied under current federal regulations. "It's hard to imagine we [can] do the things that we need to do to support our economy, our society," the director of Utah's Department of Transportation said. "Today, it seems like it's much harder to do things that matter." *Id.*

Federal regulations don't need to be applied this way. The D.C. Circuit's overbroad application of NEPA only exacerbates the federal overregulation problem.

Conclusion

The Court should reverse the D.C. Circuit's judgment below.

Respectfully submitted,

/s/ Stanford E. Purser

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Utah Solicitor General

Counsel of Record

Office of the Utah

Attorney General

160 E. 300 S., 5th floor

P.O. Box 140858

Salt Lake City, UT 84114-0858

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State of Utah