

BLACKBURN CARTER

A Professional Corporation - Lawyers

4709 Austin Street, Houston, Texas 77004
Telephone (713) 524-1012 ♦ Telefax (713) 524-5165

www.blackburncarter.com

JAMES B. BLACKBURN, JR.

MARY W. CARTER

CHARLES W. IRVINE

MARY B. CONNER

MICHAEL P. MCEVILLY

JAMES B. BLACKBURN, JR.

Sender's E-Mail: jbbblaw@blackburncarter.com

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Via STB E-Filing System

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

**RE: STB Finance Docket No. 35781
Brazos River Bottom Alliance—Petition for Declaratory Order—In Robertson
County, TX**

Dear Ms. Brown:

On behalf of the Brazos River Bottom Alliance, we filed a Petition for Declaratory Order (“Petition”) with the Surface Transportation Board (“the Board”) on October 24, 2013. The Petition sought confirmation from the Board in the form of a declaratory order that Union Pacific Railroad (“UPR”) required approval under 49 U.S.C. § 10901 for its rail project planned in Robertson County, Texas. New facts have developed since the filing of the Petition. We write the Board today in order to supplement the record with these new factual developments.

A number of recent train derailments and accidents involving crude oil shipments have made national headlines. These incidents have sharply raised the issue of public safety in communities near rail lines. In particular, federal regulators from the Pipeline and Hazardous Materials Safety Administration have issued warnings on the high flammability of Bakken oil, cautioning communities about these dangers; further, chairmen of the Senate Transportation and Energy committees have urged the Obama administration to take prompt action and review relevant federal rules after these recent derailments.

Petitioners wish to bring these news headlines to the Board’s attention. The likelihood of such rail accidents impacting Petitioners increases as UPR builds new lines in Robertson County, Texas. Importantly, as discussed in the Petition, the fracking industry and shale plays (including Bakken and Eagle Ford) are one of the interstate and intrastate markets that UPR seeks to serve by constructing the new lines in Robertson County.

A project of new lines—of the size and scale of UPR’s in Robertson County, which seeks to reach new markets and will have definitive impacts on interstate commerce—must be approved by the Board, in order to ensure that it complies with federal policy, including public safety requirements. UPR’s project must receive the federal oversight and review that the Petitioners and community of Robertson County deserve.

Background

The twenty first century hydraulic fracturing oil boom, and the development of the Permian Basin and Bakken shale oil ranges in particular, has greatly transformed oil-by-rail shipment and the development of new rail transportation markets. Shale oil development in these ranges has resulted in the development of unprecedented oil-by-rail volumes. According to EY Oil & Gas, rail shipments of crude have increased from 18,000 barrels a day in 2008, before the shale boom began, to 425,000 barrels a day in 2012.¹ Rail shipments of oil and petroleum products increased another 31 percent in 2013, and rail shipments out of the Bakken alone have crept up to about 600,000 barrels per day.²

During this same time, UPR’s network of rail lines has experienced tremendous growth in traffic in its Southern Region, which includes Texas.³ UPR continues to increase its oil-by-rail shipments and expand line capacity in its Southern Region to meet this new market. UPR has indicated that it moved nearly 50,000 carloads of crude oil in 2012, up from 2,000–5,000 carloads in 2011.⁴ In the fall of 2012, UPR was moving 125 unit-trains of crude oil a month—roughly 270,000 barrels per day, or 15 times the total amount of crude oil shipped by all railroad companies combined just four years before.⁵

Union Pacific officials have stated that they expect continued opportunity for rail in this marketplace and that they are looking to develop additional capacity to meet the demand from the Bakken and Eagle Ford shale oil ranges.⁶ The Robertson County project to construct new lines is clearly intended to serve these interests.

Recent Developments Meriting Supplementation to the Board

Recently, two BNSF Railway trains derailed in Casselton, North Dakota, spilling about 400,000 gallons of crude oil.⁷ The incident caused huge explosions, sending towering fireballs into the sky. This incident followed two other newsworthy derailments in 2013, one which proved catastrophic

¹Collin Eaton & Zain Shauk, “Train Explosions Prompt Regulator Warning on Bakken Oil Flammability,” HOUSTON CHRONICLE (Jan. 2, 2014), <http://fuelfix.com/blog/2014/01/02/bakken-oil-may-be-more-flammable-regulator-warns/>.

² *Id.*

³ Union Pacific Corporation 2012 Analyst Fact Book 30-31, <http://www.up.com/investors/factbooks/index.shtml>.

⁴ G. Allen Brooks, “Shale Revolution Leads to Rebirth of Rail Transport,” DOWNSTREAMTODAY.COM (Jan. 30, 2013), <http://www.downstreamtoday.com/News/ArticlePrint.aspx?aid=38378>.

⁵ *Id.*

⁶ Janet McGurty & Lynn Adler, “Union Pacific Sees Rail Oil Shipments Quadrupling,” REUTERS (July 22, 2011).

⁷ Zain Shauk, “Federal Probe Details Events in Fiery Train Oil Spill,” FUEL FIX (Jan. 13, 2014), <http://fuelfix.com/blog/2014/01/13/federal-probe-details-events-in-north-dakota-train-oil-spill/>.

for a small town. On July 7, 2013, 47 people were killed in Lac-Megantic, Quebec when a train carrying Bakken crude oil derailed near the USA-Canada border.⁸ On November 8, 2013, a tanker train carrying crude oil caught fire and exploded after derailing in western Alabama.⁹

After the incident in North Dakota, the Pipeline and Hazardous Materials Safety Administration issued a safety alert stating that oil moving out of the Bakken Shale play in North Dakota and Montana may be more flammable than traditional heavy crude oil.¹⁰ According to Ramanan Krishnamoorti, a professor of engineering and chief energy officer at the University of Houston, this light, sweet crude oil generally has higher levels of lighter hydrocarbons, which can become gaseous and are more easily flammable.¹¹ This lighter crude oil is similar in composition to that found in the Eagle Ford Shale play in Texas.¹²

On January 9, 2014, Senators Jay Rockefeller (D-W.Va.) and Ron Wyden (D-Ore.), respective chairmen of the Senate Transportation and Energy committees, urged the Obama administration to take “prompt and decisive” action following these recent train derailments involving crude oil shipments.¹³ Senators Rockefeller and Wyden said the administration should evaluate whether federal rules adequately address the risks of carrying crude oil by rail.¹⁴

The safety issues surrounding the rail transportation of crude oil are important areas of federal policy.

Compelling Reasons for the Board to Assume Approval Authority over Union Pacific’s Project

The drastic growth in oil-by-rail shipments and the recent string of derailments and accidents give rise to an increased need to assure adequate consideration of public safety and environmental factors in the Surface Transportation Board’s decisionmaking processes.

There is widespread and growing concern that small communities, such as in Robertson County, are not adequately prepared for major derailments. Petitioners have learned from the Emergency Management Coordinator for Robertson County and the Assistant Fire Chief with the College Station Fire Department that Robertson County will rely on their seven volunteer fire departments as first responders only and that the College Station Fire Department will be responsible for providing the hazmat team to address any chemical spills or accidents. The town of Mumford is approximately twenty-two miles from College Station, with approximately the last eight miles of

⁸ Brian Mann, “Lac-Megantic Blast Leaves Impact on Town, Rail Industry,” NPR (Oct. 14, 2013), <http://www.npr.org/2013/10/14/227840021/lac-m-gantic-blast-leaves-impact-on-town-rail-industry>.

⁹ “Train Carrying Crude Burns in Western Alabama,” ASSOCIATED PRESS (Nov. 8, 2013), <http://fuelfix.com/blog/2013/11/08/train-carrying-crude-burns-in-western-alabama/?cmpid=eefl>.

¹⁰ Zain Shauk & Collin Eaton, “Train Explosions Prompt Regulator Warning on Bakken Oil Flammability,” FUEL FIX (Jan. 2, 2014), <http://fuelfix.com/blog/2014/01/02/bakken-oil-may-be-more-flammable-regulator-warns/>.

¹¹ *Id.*

¹² *Id.*

¹³ Matthew Daly, “Senators Call for Action on Oil Train Derailments,” HOUSTON CHRONICLE (Jan. 9, 2014), <http://www.chron.com/news/politics/article/Senators-call-for-action-on-oil-train-derailments-5128904.php>.

¹⁴ *Id.*

the route being on a narrow farm-to-market road. It will likely take at least an hour before a hazmat team will be able to respond to a serious derailment, spill, or other accident.

Communities like that in Robertson County need the oversight of the federal agency charged with railroads to ensure that all aspects, including public safety issues, of a new project (such as the new lines in Robertson County) are considered. As these recent news stories demonstrate, there are many compelling reasons for the Board to assume authority over Union Pacific's proposed project in Robertson County.

Sincerely,

BLACKBURN CARTER, P.C.

by 
James B. Blackburn, Jr.

c: Jeremy M. Berman *Via Email and U.S. First Class Mail*
Assistant General Attorney
Union Pacific Railroad
1400 Douglas St., STOP 1580
Omaha, NE 68179
402-544-4735
jmberman@up.com