June 12, 2015

Office of U.S. Senator Maria Cantwell
511 Hart Senate Office Building
Washington, D.C. 20510

Re: "Crude-By-Rail Safety Act" as Introduced – S. 859

Dear Ms. CANTWELL, Ms. BALDWIN, Mrs. FEINSTEIN, and Mrs. MURRAY,

On behalf of the Pacific States/British Columbia Oil Spill Task Force (Task Force), I am submitting this letter to you to regarding our concerns with Senate Bill 859 addressing crude by rail safety.

The Task Force consists of a coalition of West Coast states (Alaska, California, Hawaii, Oregon and Washington) and British Columbia that share a common goal of protecting the region's natural resources and communities from oil spills. Over the past 4 years, movement of Bakken crude across the Northwest and California has increased dramatically. In Washington alone, crude movement by rail has gone from negligible volumes in 2010, to roughly 17 million barrels in 2013, to 30 million barrels in 2014. Increases in movement of crude by rail are taking place across California and Oregon as well. Given this striking increase in the movement of crude oil by rail across the West Coast, we have significant concerns about states ability to fully prepare and respond to rail spills.

The Task Force is generally supportive of the overall goal of Senate Bill 859. However the Task Force has two specific concerns regarding:

1: the preemptive effect over States' abilities to establish oil spill preparedness and planning requirements related to the transportation of crude oil and petroleum by railroads, and

2: clarification lacking on who in the Federal government is responsible for oil spill planning.

The Oil Pollution Act of 1990 (OPA), which amended the Clean Water Act (CWA), expressly placed upon the President of the United States the mandate to establish broad oil spill planning and response requirements. [See 33 USC §1321(d)(j)] In 1991, by *Executive Order 12777*, President G.H. Bush *delegated* to various agencies his duties to implement the CWA/OPA mandates placed upon him. Not surprisingly, the U.S. Department of Transportation (U.S. DOT) was tasked by the President with establishing oil spill planning requirements for railroads, pipelines, and trucks.

However, this bill instead directly places railroad oil planning responsibility with U.S. DOT, not the President. Thus, the bill is inconsistent with the existing CWA/OPA provisions, and blurs the authority for national oil spill planning as relates to railroads. The Task Force recommends the bill should expressly keep the authority with the President pursuant to the CWA/OPA, who can then delegate these new requirements to U.S. DOT as was done in 1991.

The bill touches upon the following topics regarding oil spills from railroads:

- “Revisions” to the federal oil spill contingency plan requirements. [Sec. 8, p. 12]
- “Modify” the minimum threshold for needing a “comprehensive” oil spill plan. [Sec. 8, p. 12]
- Establishment of "additional requirements to respond" to an oil spill in waters or other areas. [Sec. 8, p. 12-13]
- “Audit” of the “comprehensive” oil spill response plans. [Sec. 7, p. 11, line 12]
- Development of an "audit program" for plans, to ensure: [Sec. 8, p. 14-15]
    - Removal of worst case discharge.
    - "Mitigate and prevent" threat of worst case discharge.
    - Use of appropriate safety provisions and shipping classification.

There is no mention in the bill regarding States’ right to also establish oil spill planning requirements for railroads. Currently, the CWA and OPA clearly allow States some latitude to establish robust oil spill planning and response programs. [See 33 USC §1370 and §2718.] Thus, the Task Force strongly recommends the bill be amended to include a provision that States are not preempted from establishing oil spill planning and response requirements for railroads, which are so important to local communities and habitats.

With best regards,

Sarah Brace
Executive Coordinator
Pacific States/British Columbia Oil Spill Task Force