

**Testimony regarding HB 2209**  
**To the House Committee on Veterans and Emergency Preparedness**  
**By Steven D. McCoy, Friends of the Columbia Gorge**  
**February 7, 2019**

Good afternoon Chair Evans and members of the Committee. Thank you for the opportunity to testify on HB 2209. My name is Steve McCoy. I am a Staff Attorney with Friends of the Columbia Gorge (“Friends”). I would like to thank the Committee and Representatives Evans, Lively, and Lewis and the members of the workgroup including the Speaker’s office, DEQ, the tribes, and the railroads for your hard work on this bill.

In 2017 and for this cycle, Legislative Counsel issued opinions regarding the constitutionality of draft oil train safety bills and any conflicts that may exist with federal railroad law. (I submitted those memoranda to committee staff for inclusion on OLIS.) In both instances, Legislative Counsel determined that, while a case could be brought in an attempt to invalidate oil train safety legislation in Oregon, such a case was likely to fail. In addition, LC noted that similar laws were in existence in Washington and California and that those laws had gone largely unchallenged.

In one instance, BNSF Railway did challenge a California law to impose fees on railroads for the transportation of hazardous materials by rail in the state. In that case, the Ninth Circuit Court of Appeals determined that such a fee is allowed under the Hazardous Materials Transportation Act as long as the fee is “fair.”<sup>1</sup> The Ninth Circuit then determined that the fee imposed by California was not fair because it was solely imposed on railroads and not on trucks as well. In Oregon, such a fee would be fair under the law because it is already imposed on other modes of transportation, including trucks.<sup>2</sup> Railroads would simply be added to the mix so that no particular mode of transportation would be favored.

In summary, the provisions of the bill before you today and the amendments offered by Friends are already law in neighboring states and, to the extent that they have been reviewed by courts, they have proven to be constitutional and not preempted by federal railroad law. Please support and strengthen HB 2209 and help protect the Columbia River Gorge National Scenic Area and its communities from another oil train derailment and spill. Thank you for this opportunity to comment.

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<sup>1</sup> The case is *BNSF Railway Company v. California Department of Tax and Fee Administration*, 904 F.3d 755 (9th Cir. 2018).

<sup>2</sup> See ORS 468B.405.