

# Congress of the United States

Washington, DC 20510

August 5, 2019

The Honorable Elaine Chao  
Secretary  
Department of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

The Honorable Howard Elliott  
Administrator  
Pipeline and Hazardous Materials Safety  
Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary Chao and Administrator Elliott,

We write in strong support of federal preemption of Washington State's Volatility Restrictions on Crude Oil Transported by Rail that is the subject of a petition filed on July 17, 2019, by the Attorneys General of the State of North Dakota and the State of Montana to the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the Department of Transportation (DOT). This preemption petition is in response to legislation recently signed into law in the State of Washington that will effectively block the Pacific Northwest as a destination for Bakken crude oil and directly undermines DOT's authority to promulgate and enforce regulations governing the transportation of goods in commerce.

As you know, the renaissance in energy production that began a decade ago has led the United States on the path to becoming the world's largest exporter of oil, natural gas liquids, and petroleum products. The Bakken Shale Formation in North Dakota and Montana produces more than 1.3 million barrels<sup>1</sup> of oil per day, second only to the Permian Basin in West Texas and New Mexico. Nationally, U.S. exports of crude oil have risen to more than 3 million barrels of oil per day<sup>2</sup> – and we are on pace to become a net exporter of energy in 2020<sup>3</sup> for the first time in nearly 70 years. The Washington State law (Engrossed Substitute Senate Bill 5579) threatens to reverse the gains that have made our country energy independent by discriminating against Bakken crude oil and domestic energy production in favor of foreign imported crude oil, and as such poses significant national security concerns.

Specifically, the Washington State law would require crude oil loaded or unloaded from a rail tank car in Washington State to meet a 9 psi Vapor Pressure. As conditioning Bakken crude for transport below 9 psi would place undue burden on Bakken operators, this law would result in a de facto ban on the Pacific Northwest as a destination for Bakken crude oil by rail. To put the scope of this restriction into perspective, more than 15.9 million barrels of crude oil were moved by rail through Washington State in Q1 2019, all of which originated in North Dakota and Montana<sup>4</sup>.

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<sup>1</sup> North Dakota Department of Mineral Resources. "ND Monthly Oil Production Statistics"

<sup>2</sup> U.S. Petroleum Balance Sheet. Week Ending 7/5/2019. U.S. Energy Information Administration

<sup>3</sup> U.S. Energy Information Administration. "Annual Energy Outlook 2019 with projections to 2050." January 24, 2019

<sup>4</sup> "Crude Oil Movement by Rail and Pipeline Quarterly Report: January 1, 2019 through March 31, 2019." May 2019. Washington State Department of Ecology

Under Federal law, DOT and PHMSA have primary statutory authority to assure a nationally uniform set of regulations applicable to the transportation of crude oil. In addition, under the U.S. Constitution, individual states are prohibited from restricting interstate commerce between states. Article 1, Section 8, Clause 3 (the "Commerce Clause") of the U.S. Constitution expressly grants Congress, and therefore the federal government, the sole power "to regulate Commerce with foreign Nations, and among the several states, and with the Indian tribes." As the Washington State law prohibiting the in-state loading and unloading of crude oil with a Vapor Pressure of more than 9 psi interferes with the safe transportation of crude oil amongst the states, we strongly believe that it violates the commerce clause and therefore should be preempted by PHMSA.

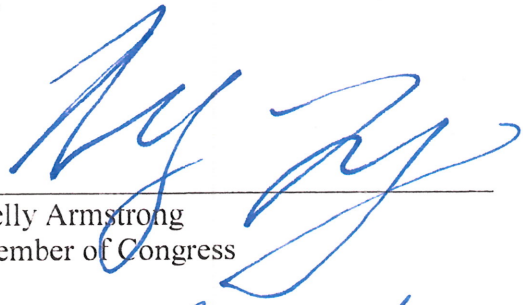
The safe production and transportation of crude oil should be a top priority for everyone involved. However, Washington State's law sets a worrying precedent where one state with access to particular transportation routes dictates national and foreign energy policy by restricting another states' ability to move their natural resources. Should other states follow Washington State's lead and create their own restrictions on the transportation of goods, the patchwork of those laws and regulations could severely inhibit interstate commerce.

Accordingly, we urge you to support the preemption petition filed by North Dakota and Montana, and protect our ability to safely transport domestic energy products throughout the country.

Sincerely,



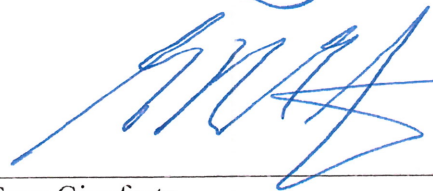
John Hoeven  
United States Senator



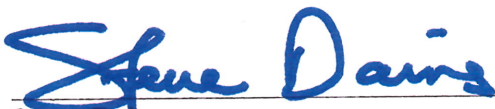
Kelly Armstrong  
Member of Congress



Kevin Cramer  
United States Senator



Greg Gianforte  
Member of Congress



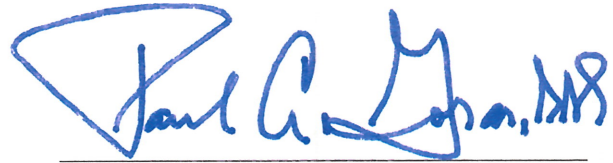
Steve Daines  
United States Senator



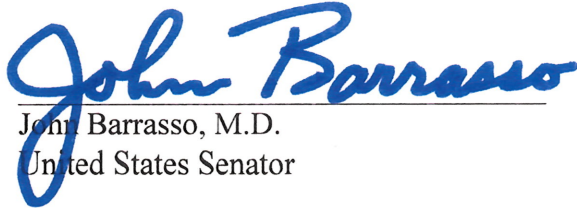
Robert E. Latta  
Member of Congress



Todd Young  
United States Senator



Paul Gosar, D. D. S.  
Member of Congress



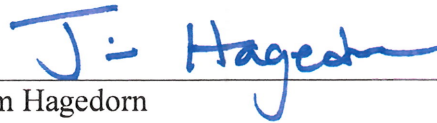
John Barrasso, M.D.  
United States Senator



Markwayne Mullin  
Member of Congress



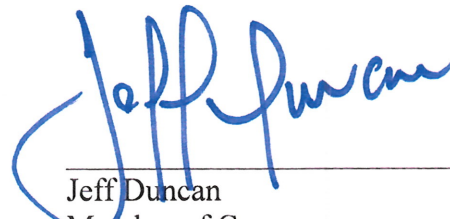
James M. Inhofe  
United States Senator



Jim Hagedorn  
Member of Congress



Michael B. Enzi  
United States Senator



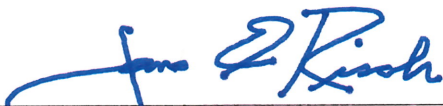
Jeff Duncan  
Member of Congress



Dan Sullivan  
United States Senator



Pete Stauber  
Member of Congress



James E. Risch  
United States Senator



Michael Cloud  
Member of Congress



Mike Crapo  
United States Senator



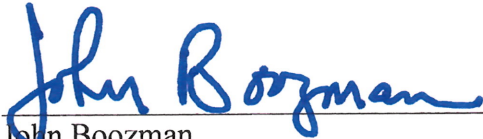
Liz Cheney  
Member of Congress



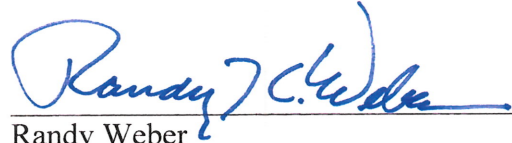
John Kennedy  
United States Senator



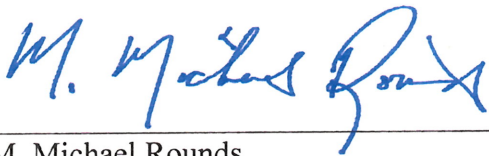
Bill Flores  
Member of Congress



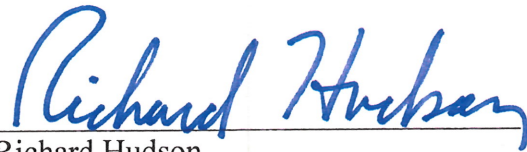
John Boozman  
United States Senator



Randy Weber  
Member of Congress



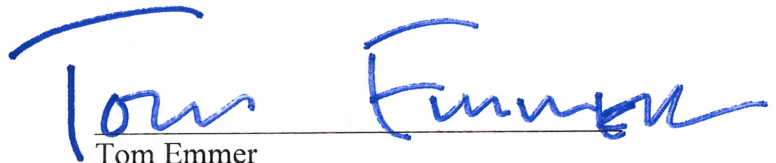
M. Michael Rounds  
United States Senator



Richard Hudson  
Member of Congress



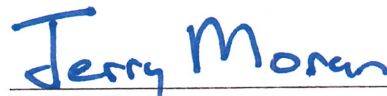
Martha McSally  
United States Senator



Tom Emmer  
Member of Congress



James Lankford  
United States Senator



Jerry Moran  
United States Senator



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Ted Cruz  
United States Senator



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Bill Cassidy, M.D.  
United States Senator