



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Ref: 8EPR-N

Ms. Phillis Johnson-Ball
Section of Environmental Analysis
Surface Transportation Board
Case Control Unit
395 E Street, SW
Washington, D.C. 20423

RE: Wetlands Issues to be Addressed in
Supplemental Information for the
Central Utah Rail Project DEIS
Surface Transportation Board Docket
Number FD34075

Dear Ms. Johnson-Ball:

Thank you for inviting Douglas Minter and Dick Clark of the Environmental Protection Agency's (EPA) Region 8 National Environmental Policy Act (NEPA) Program to participate in the recent field tour of the Surface Transportation Board's (STB) proposed alignment for new rail construction along the Sevier River Valley in Central Utah. The resultant discussions enabled EPA to gain a better understanding of the basis for the STB's Preferred Alternative identified in its Draft Environmental Impact Statement (DEIS). During these discussions, EPA committed to providing comments to the STB regarding the major wetlands issues associated with this project.

EPA believes these issues should be addressed as the STB prepares its Supplemental Information on this DEIS. EPA supports the STB's decision to work with the United States Army Corps of Engineers (COE) as a cooperating agency to ensure that the results from an adequate wetlands assessment can be incorporated into this Supplemental Information. EPA will provide comments on the entire DEIS, including a formal rating, pursuant to Section 309 of the Clean Air Act (CAA), 42 U.S.C. Section 7609, once the STB publishes the Supplemental Information to this DEIS for public comment.

Wetlands Occurrence and Characterization

Based on the field tour, EPA understands that no more than 106 acres of wetlands could be lost due to rail construction associated with the Preferred Alternative, a correction to the 163 acres noted in the DEIS. EPA observed that the majority of these potential impacts would be in and around the Chicken Creek Reservoir area at the rail corridor's proposed northern terminus near Juab, with smaller acreages potentially impacted in or near the Yuba Narrows, the Redmond Wildlife Management Area, and the rail corridor's proposed southern terminus near Salina.

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Based on these observations, and input provided by the COE during the visit, EPA also understands that the acreage of wetlands lost could be less than the current 106-acre estimate. To more definitively determine the actual scale and nature of potential wetlands loss, EPA believes that a better assessment of wetlands occurrence as well as a better characterization of the wetlands subsequently identified is needed. This would enable the impacts associated with the DEIS Alternatives to be adequately and accurately analyzed, and additional measures associated with these Alternatives to be developed to avoid, minimize, and/or mitigate these impacts.

Wetlands characterization should include identification of specific functions (e.g., waterfowl flyway habitat, flood control, nutrient removal, particulate retention, groundwater recharge, and hydrologic support for plants and wildlife) provided by the aquatic resources and these functions compared for the Alternatives in the Supplemental Information to the DEIS. This discussion should explain the relative importance of these wetlands and the associated effects of acreage losses in the context of the remaining resource and populations that may utilize and depend on those resources. ✓

Development of Alternatives

Based on EPA's review of the DEIS, EPA believes the range of alternatives presented in the DEIS may not include all reasonable alternatives as required in the Council of Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1502.14). As discussed during the field visit, EPA believes the STB should fully explore and evaluate in its Supplemental Information to the DEIS, an additional alternative which significantly reduces potential impacts to the wetlands in the Sevier River Valley. Specifically, consideration should be given to an alignment that avoids, to the extent practicable, the wetlands and associated springs in and near the Chicken Creek Reservoir at the proposed rail corridor's northern terminus. In reviewing the maps provided by the STB's consultant, EPA believes such an alignment can be proposed without adversely impacting agricultural lands and other important resources. Better characterization of the wetlands in this area (as noted above) should help inform the development of such an Alternative. ✓

Furthermore, Clean Water Act (CWA) Section 404 regulates the discharge of dredged or fill material into "waters of the United States," including certain wetlands. Under CWA Section 404, permits for such discharges are generally issued by the COE, in accordance with EPA's CWA Section 404(b)(1) Guidelines. The Guidelines require that no other practicable alternatives to the proposed discharge exist that would have less adverse impact on the aquatic ecosystem, as long as the alternative does not have other significant adverse environmental consequences. 40 CFR § 230.10(a). A CWA 404 permit cannot be issued until a permit applicant demonstrates compliance with the 404(b)(1) Guidelines. Because the rail construction from this project will result in the discharge of dredged and fill material into "waters of the United States", a CWA 404 permit from the COE to discharge this material will be required. EPA does not believe the current wetlands impact analysis in the DEIS is sufficient to meet the requirements regarding the obligation to select the least environmentally damaging practicable alternative as defined by the Guidelines.

Mitigation

The STB's identification and discussion of mitigation of impacts to waters of the US (and wetlands specifically) should be further developed in the Supplemental Information to the DEIS, particularly in light of the potential scale of wetlands loss. Page 6-14 of the DEIS makes general reference to mitigation measures, including best management practices, that will be required in all permits obtained including from the COE's CWA Section 404 and Utah's CWA Section 401 programs. However, EPA believes a more robust analysis of these impacts is needed to comply with NEPA through disclosure of project-specific mitigation. Specifically, the CEQ Guidance for NEPA compliance (40 Most Asked Questions Concerning CEQ's NEPA – 40 CFR 1500-1508) states that NEPA requires that "reasonable alternative mitigation measures and monitoring programs" should be addressed in the draft and final environmental impact statement. Additionally, NEPA requires discussion of mitigation measures in the range of alternatives assessed and with respect to environmental consequences. (40 CFR 1502.14(f) and 1502.16(h)). The CWA Section 404(b)(1) Guidelines generally require information on types of mitigation, mitigation plans, monitoring plans, standards for measuring mitigation success, and a contingency plan in case of mitigation failure. This information should be in the Supplemental Information to the DEIS in order to make the required CWA 404(b)(1) Guidelines determination that all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem have been taken (40 CFR 230.12(a)(3)(iii)). As noted above, a CWA Section 404 permit cannot be issued until a permit applicant can demonstrate compliance with the 404(b)(1) Guidelines.

In addition, Executive Order 11990 – Protection of Wetlands (May 24, 1977) states in pertinent part as follows: "Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. (b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property."

We believe that once better identification and characterization of the wetlands are completed, more specific mitigation measures can be proposed in the Supplemental Information to the DEIS. Such measures could include: 1) acquisition of land near Chicken Creek Reservoir where springs are located to reduce impacts from livestock and enhance/restore currently marginal wetlands; 2) reducing the footprint on wetlands acreage in and around the proposed rail yards associated with the northern and southern terminuses; 3) enhancement of wetlands through acquisition of land adjacent to the Redmond Wildlife Management Area; and 4) improvement of water quality (e.g., restoration of impaired stream segments) within the Sevier River watershed. In implementing these and/or other measures, the Supplement Information to the DEIS should also discuss what monitoring programs will be in place to evaluate the success of such mitigation. ✓

EPA understands that the public comment period for this DEIS, announced by the STB on June 29, 2007, in the Federal Register (FR), was extended through a subsequent FR notice published on August 24, 2007. Specifically, the STB announced that it will be issuing Supplemental Information on alternatives and wetlands to assist the public in its review of the proposed project. The STB also stated that it will publish another FR notice announcing a date for when comments on this information and the DEIS are due. After the close of this extended public comment period, the STB will prepare a Final Environmental Impact Statement that considers all comments received on both the DEIS and Supplemental Information. Upon our review of this information, EPA will provide written comments to the STB including our rating pursuant to CAA Section 309.

Thank you for the opportunity to provide input into the development of the Supplemental Information to the DEIS. We look forward to continuing to work with the STB to address these wetlands issues, and to providing comments on the entire DEIS. If you have any questions, please contact Douglas Minter of my staff at (303) 312-6079.

Sincerely,



Larry Svoboda
Director, NEPA Program
Office of Ecosystems Protection and Remediation

cc: Michael Jewell, USCOE, Sacramento
James McMillan, USCOE, Bountiful

