

E1-6982

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Docket #: -35095 - -

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Message:

Please accept EPA comments on the Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the Petition for Exemption to Construct and Operate a Rail Line Extension to Port MacKenzie.
Thank you.
Mel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

March 21, 2008

Reply To
Attn Of: ETPA-088

Ref: 08-011-DOT

Mr. David Navecky
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Dear Mr. Navecky:

The U.S. Environmental Protection Agency (EPA) has reviewed the *Federal Register Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the Petition for Exemption to Construct and Operate a Rail Line Extension to Port MacKenzie*, Matanuska-Susitna Borough (MSB), Alaska. EPA has reviewed the NOI in accordance with our responsibilities under National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

Section 309 specifically directs the EPA to review and comment in writing on the environmental impacts associated with all major Federal actions. Our review considers not only the impact to the environment but also the adequacy of the NEPA document itself. Our intent is to help ensure that the EIS adequately sets forth analysis of the environmental impacts of the proposed project, all reasonable alternatives, and discussion of significant issues. The scoping comments that follow are provided to inform the Surface Transportation Board (STB) of issues that the EPA believes to be significant and warrant treatment during the NEPA process. We would welcome a call from you should you have questions or concerns that we might be able to help you with during preparation of the EIS.

According to the NOI, the Alaska Railroad Corporation (ARRC) plans to file a petition with the Surface Transportation Board (the Board) pursuant to 49 U.S.C. 10502 for authority to construct and operate approximately 30 to 45 miles of new rail line connecting the Matanuska-Susitna Borough's Port Mackenzie (Port) in southcentral Alaska to a point on the ARRC main line between Wasilla and north of Willow, Alaska. Based on the NOI, the purpose of the

proposed project is to establish a rail link between the Port and the ARRC rail system, in order to provide Port customers and shippers with rail transportation between the Port and Interior Alaska. The construction of a rail line would satisfy the need for an additional mode of transportation for the movement of bulk materials, intermodal containers, and other freight to and from the Port.

The EPA appreciates the opportunity to participate early in the planning process for this project. If you have any questions or would like to discuss any of the issues in this letter, please contact me at (907)271-1481 or by electronic mail at bukhari.fatima@epa.gov. For any questions or comments regarding wetlands please contact Matthew LaCroix at (907) 271-1480 or by electronic mail at LaCroix.Matthew@epa.gov

Sincerely,

/s/

Fatima Bukhari, Environmental Engineer
NEPA Review Unit

Enclosure

**U.S. Environmental Protection Agency (EPA) Comments on the NOI to Prepare an
Environmental Impact Statement (EIS) for the Petition for Exemption To Construct and
Operate a Rail Line Extension to Port MacKenzie.**

Purpose and Need

The EIS should include a clear and concise statement of the underlying purpose and need for the proposed project, consistent with the implementing regulations for NEPA (40 CFR 1502.13). Given the size of the project area and the number of projects occurring in the Port MacKenzie/Knik Arm area, a concise statement is of critical importance in setting up the analysis of alternatives, which could range from too tightly focused to too broad, depending on how the statement is written.

In presenting the purpose and need for the project, the draft EIS should reflect not only the STB's purpose but also the broader public interest and need. The EIS document should specify the underlying purpose and need for the proposed action and support these with reasonable alternatives that meet the objectives of the purpose and need. Our objectives in reviewing the Purpose and Need for the draft EIS will be to ensure it:

- is concise and reflects the underlying purpose and need for the proposed action, in accordance with NEPA implementing regulations (40 CFR 1502.13);
- does not result in the elimination of reasonable alternatives from consideration and evaluation in the EIS or unduly influence the decision making process; and
- reflects a balanced presentation of all the needs that are to be met in the development of alternatives,

Based on the information in the NOI it is unclear what commodities may be shipped via this line. EPA recommends developing a strong purpose and need statement that specifically identifies the need for the project, including commodities that will be shipped via this line.

Range of Alternatives

The alternatives section is the heart of the NEPA analysis of how the proposed action(s) may adversely affect the ecosystem. The Council on Environmental Quality (CEQ) NEPA regulations direct Federal agencies to use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment (40 CFR 1500.2(e)). Under 40 CFR 1502.14 of the CEQ regulations, agencies are directed to:

- Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- Devote substantial treatment to each alternative considered in detail, including the

- proposed action, so that reviewers may evaluate their comparative merits.
- Include reasonable alternatives not within the jurisdiction of the lead agency.
 - Include appropriate mitigation measures not already included in the proposed action or alternatives.
 - Identify the agency's preferred alternative.

The draft EIS should include a range of reasonable alternatives that meet the stated purpose and need for the project and that are responsive to the issues identified during the scoping process. This will ensure that the draft EIS provides the public and the decision-maker with information that sharply defines the issues and identifies a clear basis for choice among alternatives as required by NEPA. The Council on Environmental Quality recommends that all reasonable alternatives be considered, even if some of them could be outside the capability or the jurisdiction of the agency preparing the EIS for the proposed action.

Aquatic Resources

Waters of the U.S., including wetlands, are found along all potential rail alignments. Construction components that include dredging or filling activities that affect such waters will require authorization from the U.S. Army Corps of Engineers (USACE). For this reason, we recommend that the EIS be sufficiently detailed to support the Clean Water Act section 404 permitting review, and to establish compliance with EPA's 404(b)(1) Guidelines (40 CFR Part 230). These guidelines allow only the least environmentally damaging practicable alternative (LEDPA) to be permitted.

The Section 404(b)(1) Guidelines (Guidelines) are explicit that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences [40 CFR 230.10(a)]. A permit cannot be issued in circumstances where a less environmentally damaging practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

The evaluation of practicable alternatives required by the 404(b)(1) Guidelines occurs "in light of the overall project purposes" [40 CFR 230.10(a)(2)]. The "overall project purposes" under which the USACE and EPA evaluate alternatives for practicability must be construed in the broadest sense that will accomplish the project's primary objective. The determination of practicable alternatives is an independent, objective assessment that is not constrained by the NEPA document's purpose and need statement.

We recommend that the STB carefully consider the "overall project purposes" as defined by the Guidelines when developing the EIS' purpose and need statement. If the document's purpose and need statement is compatible with the "overall project purposes," the resultant alternatives analysis is also more likely to be compatible with that required for the Section 404 permitting. Compliance with the Guidelines will be more readily demonstrated if this is the case.

The burden of proof to demonstrate compliance with the Guidelines rests with the applicant.

If an application contains insufficient information to determine compliance, the Guidelines require that no permit be issued. If the purpose and need statement and the alternatives analysis contained in the EIS are not sufficient to demonstrate compliance with the Guidelines, a Supplemental EIS may be necessary to allow the project to be permitted.

In addition to the situation described above, where the project will be considered non-compliant with the Guidelines if there is insufficient information to make a reasonable judgment as to whether the proposed discharge will comply, the Guidelines define a project as being non-compliant if:

- there is a practicable alternative to the proposed discharge;
- the proposed discharge will result in significant degradation of the aquatic ecosystem; or
- the proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem.

The guidelines establish a high bar for the avoidance and minimization of project impacts, and require the evaluation of alternatives as well as the incorporation of measures to minimize harm.

It is important to keep in mind that the actions, alternatives, avoidance and minimization measures being evaluated in the Section 404 permitting context will be more specific than simply a choice of alignments. The actions will be those individual project components such as wetland and stream crossings that require authorization from the USACE. If the EIS focuses solely on alignment alternatives, it will likely not be sufficient to support the Section 404 permitting.

Just as is the case for “overall project purposes,” the Guidelines also define “practicable alternative.” An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes [40 CFR 230.10(a)(2)]. The 404(b)(1) Guidelines do not require consideration of cost beyond the determination of practicability.

As articulated in the Guidelines’ preamble, the consideration of cost is not an economic analysis (45 FR 85339 December 24, 1980). The purpose of consideration of cost is not to compare the cost of the applicant’s proposed project against the costs of alternatives but to determine whether an alternative is reasonable in terms of the overall scope and cost of the proposed project (45 FR 85339 December 24, 1980). Conversely, the costs of an alternative to the proposed discharge of fill could be so prohibitively high (beyond industry standard) that the alternative cannot reasonably be considered practicable.

The mere fact that an alternative may cost somewhat more does not necessarily mean it is unreasonably expensive and therefore not practicable (45 FR 85339). Protecting the environment often requires designing and constructing to a higher standard, meaning that the LEDPA is rarely the least expensive alternative.

Water Quality

Water quality within the project area is likely to be degraded from increased urban and industrial land uses. The EPA recommends that there be appropriate management of project-related direct impacts to water quality. In addition, EPA recommends limiting disturbance

activities that could alter habitat, vegetation, and soil structure that may result in adverse impacts to hydrology and other ecological functions.

The EIS should state whether water bodies in the project area are listed on the Clean Water Act (CWA) Section 303(d) list of impaired water bodies. The draft EIS should disclose which water bodies maybe impacted by the project, as well as the nature of the potential impacts and the specific pollutants likely to impact those waters. If a Total Maximum Daily Load (TMDL) has not been established for those water bodies on the 303(d) list, then in the interim until one is established, the EIS must demonstrate that there will be no net degradation of water quality to these listed waters. For all water bodies, the EIS should also demonstrate that the proposed action will comply with antidegradation provisions of the CWA preventing deterioration of water bodies that currently meet water quality standards unless an analysis shows that important economic and social development necessitates degrading water quality.

Public drinking water supplies and/or their source areas occur in the project area. Activities such as road construction and fill or dredging of wetlands may adversely affect waters that serve as sources of drinking water for communities or individual households. The 1996 amendments to the Safe Drinking Water Act (SDWA) require federal agencies proposing projects that may impact drinking water sources to protect these source water areas. Source Water is untreated water from streams, rivers, lakes, springs, and aquifers that is used as a supply of drinking water. Source Water Areas are the sources of drinking water delineated and mapped by the states for each federally-regulated public water system.

State agencies have been delegated responsibility to conduct source water assessments and provide a database of information about the watersheds and aquifers that supply public water systems. We recommend that the STB contact the Alaska Department of Environmental Conservation, Division of Drinking Water, to help identify source water protection areas within or downstream of the project area. Typical databases may contain GIS and Access information of the watersheds and aquifer recharge areas, the most sensitive zones within those areas, and the numbers and types of potential contaminant sources identified for each system.

The EPA recognizes that providing high quality drinking water to protect human health is a high priority for many federal, state and local agencies. Implementing protective actions and land use decisions can be very effective in providing clean source water to public intakes and wells. This will preserve the use of public funds that would otherwise be spent to upgrade treatment facilities to remove contaminants downstream. Therefore, EPA recommends that the draft EIS:

- Identify all federally-regulated source water protection areas and state- regulated source water protection areas, if the state agency maintains that list, within or downstream of the project area;
- Identify all activities that could potentially affect source water areas;
- Identify all potential contaminants that may result from the proposed project;
- Identify all measures that would be taken to protect the source water protection areas in the draft EIS.

Also, if the project has the potential to affect a source water protection area, we recommend that the draft EIS consider recommendations in the document, "Steps to Take to Incorporate Source Water Protection into Your Plans and Projects" which we will be happy to supply upon request.

Air Quality

The EPA recommends the EIS address the effects of diesel emissions from construction equipment and truck traffic, disclose the human health effects of air toxics and particulate matter from mobile sources, and identify any sensitive receptor locations for the project with respect to construction, operations, and maintenance of the project. We recommend the draft EIS include this information.

EPA encourages the voluntary use of clean fuels, e.g., ultra-low sulfur diesel, for mitigation in construction projects and mitigation that includes retrofitting of construction equipment with clean diesel technologies, such as diesel oxidation catalysts and diesel particulate filters. Idle reduction programs can also be effective.

We also suggest that the cumulative effects analysis for air quality address the effects from different sources of the same pollutants that would be generated from project construction and operation. We recommend that this analysis be included, particularly with respect to any minority or low-income communities, or any sensitive receptor locations.

Habitat and Species Impacts

The proposed project may have impacts on fish and wildlife habitat, and habitat connectivity. The draft EIS should describe the current quality of habitat, its use by fish and wildlife on and near the proposed project area, and its potential capacity. The DEIS should also identify known fish and wildlife corridors, migration routes, and areas of seasonal fish and wildlife congregation. The draft EIS should evaluate effects on plants, fish and wildlife from habitat removal and alteration, aquatic and terrestrial habitat fragmentation caused by roads, land use, and management activities, and human activity.

Because percentages are often used to characterize the loss of habitat from a regional perspective, the direct, indirect, and cumulative effects to fish and wildlife that would result from direct and indirect habitat loss, fragmentation, and degradation may be understated. Some areas and habitats receive disproportionately high levels of use because they are of critical importance to sustain species at different life stages and/or seasons. For example, large numbers of moose depend upon the relatively snow-free habitats in southwest Mat-Su during winter; nearshore and riparian habitats are highly important for juvenile fish, particularly when terrestrial allochthonous inputs, e.g., land-based insects, sustain Knik Arm salmon and eulachon, the prey base of belugas. EPA recommends that the analysis and disclosure of environmental consequences reflect these and other important habitat connections, and the ultimate effects of these habitat losses in consideration of the anticipated development pressures.

Moose populations in urban settings interact with humans in ways that impact both species. Development is constantly altering habitats, which in turn increases conflicts between humans and moose. In recent years, there has been an increase in road-caused mortality and vehicle collisions in the lower Susitna Valley area of Alaska. Although rapid human population

growth in the area has undoubtedly increased these interactions, effective mitigation can occur with adequate knowledge of moose movements and distribution. We recommend including this information, along with adequate mitigation options such as wildlife crossings and other measures to more effectively reduce potential road kill of moose, bear, and other mammals. EPA recommends the draft EIS also discuss the extent of moose strikes that might occur as a consequence of the project.

The Alaska Department of Fish and Game (ADF&G) is developing a proposal for a moose movement study that is an essential first step to developing mitigation for threats to moose from the proposed rail line. We recommend the STB provide generous contributions to funding this study so that more mitigation methods can be identified and implemented to protect the moose.

Cumulative and Indirect Impacts

Given the number of projects occurring in or proposed for the Port Mackenzie/Knik Arm area, the draft EIS analysis should assess impacts of the proposed action over the entire area of impact, and should consider the effects of the project activities when added to other past, present and reasonably foreseeable future projects in and adjacent to the project area, including those by entities not affiliated with the ARRC. We believe that discussion of potential cumulative and indirect impacts must be included in the EIS to satisfy the implementing regulations for NEPA (40 CFR 1502.16). Only by considering all actions together can one conclude what the impacts on environmental resources are likely to be. The construction of this new rail line to establish a rail link between Port Mackenzie and the Alaska Railroad Corporation main line is likely to have connotations with respect to induced growth. If the rail is meant to be used as a passenger rail this would have effects on economic growth, it could lead to tourist expansion along the rail line, which could in turn lead to more projects within the area. If the rail is meant to be used as a freight line, it might lead to freight-related businesses along the line and accommodations for employees of those businesses. If the rail is meant to be used as both a freight line and a passenger line, both scenarios of induced economic growth will have to be considered and evaluated in the draft EIS.

EPA has issued guidance on how we are to provide comments on the assessment of cumulative impacts, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, which can be found on EPA's Office of Federal Activities home page at: <http://www.epa.gov/compliance/resources/nepa.html>. The guidance states that in order to assess the adequacy of the cumulative impacts assessment, five key areas should be considered. EPA tries to assess whether the cumulative effects analysis:

- Identifies resources if any, that are being cumulatively impacted;
- Determines the appropriate geographic (within natural ecological boundaries) area and the time period over which the effects have occurred and will occur;
- Looks at all past, present, and reasonably foreseeable future actions that have affected, are affecting, or would affect resources of concern;
- Describes a benchmark or baseline; and
- Includes scientifically defensible threshold levels.

Cumulative effects analysis should also consider appropriate mitigation strategies to minimize adverse and to enhance beneficial cumulative effects. Monitoring and evaluation of the mitigation strategies' effectiveness would also be an important component of the proposed action, especially if data obtained from such monitoring can be used to modify development and maintenance strategies.

Threatened and Endangered Species

If threatened or endangered species are potentially affected by the project, the draft EIS should include the Biological Assessment and the associated U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) Biological Opinion or formal concurrence. The draft EIS should include this information for the following reasons:

- NEPA requires public involvement and full disclosure of all issues upon which a decision is to be made;
- The CEQ NEPA regulations strongly encourage the integration of NEPA requirements with other environmental review and consultation requirements (40 CFR 1502.25); and
- The Endangered Species Act (ESA) consultation process can result in the identification of mandatory, reasonable, and prudent alternatives which can significantly affect project implementation.

Both the Biological Assessment and the EIS must disclose and evaluate the potential impacts of the proposed action on listed species. The final EIS and Record of Decision should not be completed prior to the completion of ESA consultation. If the consultation process is treated as a separate process and the FWS and/or the NMFS identifies necessary changes in project implementation which have not been evaluated in the draft EIS, a supplement to the draft EIS could be warranted.

The EPA recommends that the EIS evaluate the potential impacts of Port expansion (facilitated by the development of the proposed rail extension) on the Cook Inlet Beluga population.

Recreation and Access

Restrictions on recreation and access on public lands, as well as new access opportunities, that may result from the proposed project should be analyzed and reported in the draft EIS. The EIS should disclose all impacts associated with such activities and describe what actions will be taken to manage recreational and accessibility opportunities in the project area, and to mitigate for restricted access.

Noxious Weeds

The draft document should contain measures that are consistent with Executive Order 13112 on Invasive Species. We suggest including the STB's direction for noxious weed management, a description of current conditions, and BMPs that will be utilized to reduce the likelihood of introduction and spread of invasive species with the proposed project and on-going management activities.

Mitigation

The DEIS should include a comprehensive discussion of proposed mitigation for direct, indirect, and cumulative impacts as required by the CEQ regulations (40 CFR 1508.7). We also recommend that the DEIS discuss the demonstrated effectiveness of proposed mitigation. A detailed compensatory mitigation plan for unavoidable resource impacts should be developed and included in the DEIS. This mitigation plan should include consideration of direct, indirect, and cumulative effects. It should contain a statement of goals, a monitoring plan, long-term management/protection objectives and a contingency plan (a commitment to conduct additional work if required to meet the goals of the plan). The mitigation plan should also include best management practices where applicable.

Monitoring

The EIS should include a discussion of monitoring for each resource category determined to be significant through the scoping process, including water quality. It should help assess how well the preferred alternative addresses issues and concerns. The monitoring plan should include types of surveys, location, and frequency of sampling, parameters to be monitoring budget, commitments, and procedures for using data or results in guiding current and future activities.

A properly designed monitoring plan will demonstrate how well the preferred alternative resolves the identified issues and concerns by measuring the effectiveness, of the mitigation measures in controlling or minimizing adverse effects. The draft EIS should discuss how monitoring is being planned and incorporated into this project, and describe monitoring activities during project development operations, and subsequent to operations.

Climate Change

Scientific evidence supports the concern that continued increases in greenhouse gas emissions resulting from human activities will contribute to climate change. Effects of climate change are evident in Alaska and should be evaluated by the NEPA process. The draft EIS should consider how the proposed action, alternatives, goals, and objectives may influence the emissions and sinks of greenhouse gases, and thereby contribute to climate change. Specific management strategies and mitigation measures should be developed to minimize potential adverse effects of greenhouse gases and regional climate change. In addition, the EIS should consider how climate change would potentially influence the proposed actions within the project area.

Traditional Ecological Knowledge

The traditional ecological knowledge (TEK) that can be obtained during tribal consultation and coordination, and throughout the NEPA process, includes subsistence use and harvest data, expertise on the environment (e.g., climate patterns, water presence and levels, etc.), and information about fish and wildlife organisms and behavior, historic and current uses of land and water, cultural resources, and impacts of human activities on wildlife and the environment. TEK, in addition to strong scientific data, should be used to develop and evaluate project alternatives, and identify appropriate mitigation measures. The EIS should document how TEK has been integrated into the NEPA process and used to assist the STB in making decisions

regarding the proposed actions.

EPA has been involved with collecting TEK for use in our NEPA processes to support permit actions in Alaska. We would welcome the opportunity to meet with you to discuss our experiences and provide assistance as you develop a methodology for collecting and integrating TEK into the NEPA process and the draft EIS.

Environmental Justice

In accordance with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the draft EIS should include an Environmental Justice (EJ) analysis that describes the actions taken by the ARRC to identify low-income and people of color populations, determine and evaluate the magnitude and significance of potential human health and environmental effects from alternatives on those populations in affected communities, and present opportunities for affected communities to provide input into the NEPA process. If disproportionately high and adverse human health or environmental effects are determined to result from action alternatives or the cumulative case, then mitigation measures should be incorporated to avoid and minimize the magnitude and intensity of the impacts to low-income and/or people of color populations.

The EIS should include a description of the methodology and criteria utilized for identifying low income and people of color communities, the sources of data utilized for these analyses, and the references utilized for establishing the criteria. The EIS must demonstrate that communities bearing disproportionately high and adverse effects have had meaningful input into the decisions being made about the proposed action. The EIS needs to describe what was done to inform the communities about the proposed action and the potential impacts it will have on their communities (e.g., notices, mailings, fact sheets, briefings, presentations, exhibits, tours, news releases, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on scene information), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the proposed action.

In the EIS, both the documentation of the efforts undertaken and the completed analysis on disproportionality are needed to determine if environmental justice requirements were met in the EIS process.

Consultation with Tribal Governments

Presidential Executive Order (EO) 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000; FR Vol. 65; No. 218), recognizes the unique legal relationship the United States has with federally recognized tribal governments. The EO requires all federal agencies to establish regular and meaningful consultation and collaboration with tribal officials and to strengthen the United States Government-to-Government relationships with tribes. "Consultation" means the process of seeking, discussing, and considering the views of federally-recognized tribal governments at the earliest time. Typically, consultation means two-way communication that works toward a consensus reflecting the concerns of the affected federally recognized tribes.

EPA recommends that the EIS document the tribal consultation and coordination process by providing a chronology with the dates and locations of meetings with tribal governments, results of the meetings, and a discussion of how the tribes' (including the Knik Tribal Council) input was used to develop the EIS. The consultation and coordination with tribal governments should continue throughout the EIS development phase. This process is also an opportunity to gather traditional ecological knowledge about local subsistence use and harvest, cultural resources, and other resources and lands that may be exchanged.