UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 23 2010

REPLY TO THE ATTENTION OF:

E-19J

Robert F. Tally, Jr., Division Administrator
Federal Highway Administration - Indiana Division
575 North Pennsylvania St., Room 254
Indianapolis, IN 46204

Michael W. Reed, Commissioner
Indiana Department of Transportation
100 North Senate Ave., Room N642
Indianapolis, Indiana 46204

RE: I-69 Evansville to Indianapolis, Tier 2 Final Environmental Impact Statement for Section 2: Oakland City to Washington, Indiana. CEQ No. 20100058

Dear Mr. Tally and Mr. Reed:

The U.S. Environmental Protection Agency (EPA) has reviewed the Tier 2 Final Environmental Impact Statement (FEIS) for Section 2 of the I-69 Indianapolis to Evansville, Indiana project. We offer our comments under the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act.

The Section 2 Tier 2 FEIS is the third of six Tier 2 EISs developed by the Federal Highway Administration (FHWA) and the Indiana Department of Transportation (INDOT) for INDOT's proposed 142-mile-long I-69 (Evansville to Indianapolis) project. I-69 is proposed as a freeway facility that utilizes interchanges for access control. Section 2 is approximately 29 miles long and is located between one-half mile north of State Road 64 (SR 64) near Oakland City and one-half mile north of US 50 at Washington. It crosses the Patoka River within the U.S Fish and Wildlife Service's Patoka River National Wildlife Refuge acquisition area.

EPA reviewed and commented on the I-69 Tier 2 Draft EIS (DEIS) for Section 2 and rated the DEIS preferred alternative as LO, Lack of Objections in our letter dated June 29, 2009. Since the DEIS, the preferred alternative has been further refined and is currently identified in the FEIS as the Refined Preferred Alternative (RPA). The FEIS reports that the refinements made since the DEIS have resulted in the FEIS Refined Preferred Alternative having lowered the total required right-of-way by approximately 122 acres, reduced wetland impacts by 1.23 acres, reduced stream impacts by

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approximately 4,370 linear feet, reduced residential relocations by 2, and reduced farmland impacts by about 107 acres.

The FEIS RPA retains the four DEIS proposed interchanges. However, the location of the US 50 Interchange has been shifted slightly to the south and the folded-diamond design is identified for the South Daviess SR 57 Interchange. The FEIS identifies that INDOT will defer construction of the South Davies SR 57 and North Pike Interchanges until sufficient funding is found. Other refinements, for the most part, concern changes in realignments, extensions, and/or closures to existing and/or new local, connector and/or proposed access roads.

We find the FEIS to be informative, reflecting efforts by FHWA and INDOT to use adequate detailed information in the development and refinement of this project to further avoid and minimize impacts. The FEIS retains the Tier 1 commitments to bridge the Patoka River and Flat Creek, along with their floodplains, and to mitigate at a 3:1 ratio for the loss of upland forest. The FEIS also includes additional information regarding the status of wetland, stream and upland forest compensation mitigation plans. Since the DEIS, the mitigation banking instrument has been completed, with EPA as a signatory. Good progress is being made toward finalizing mitigation plans for Section 2. EPA requests a copy of the final wetland and stream mitigation plan as soon as it is available.

While EPA retains its lack of objections to the current proposal, our review found several misstatements in the FEIS that we recommend be corrected prior to issuing the Tier 2 Section 2 Record of Decision (ROD). They concern the characterization of EPA's September 24, 2009, Federal Register (74 FR 48690) notice regarding the annual PM2.5 monitoring data and the identification of EPA as the final authority for Clean Water Act jurisdictional determinations. Our detailed comments and recommendations regarding the FEIS misstatements and Clean Water Act Section 404 wetland and stream mitigation are provided in the enclosure to this letter.

EPA received the first I-69 annual tracking summary report from INDOT's consultant by email on 02/22/2010; thank you. This annual summary does not disclose the Tier 2 FEIS identified impact amounts (acres or linear feet) for wetland types, upland forest, and stream impacts associated with each Tier 2 Section. We recommend that the impacts information for these resources, as identified in each Tier 2 FEIS, be added to the tracking data base and included in all future annual tracking summary reports.

The Section 2 FEIS (Appendix AA) provides the running tally of direct impacts to most resources of concern associated with the entire 142-mile-long I-69 Indianapolis to Evansville alignment as EPA had requested. Since streams and karst features are resources of concern, we continue to request that the running tally also include impacts information for these resources in all future I-69 Tier 2 EISs.

We appreciate the opportunity to comment on the Section 2 FEIS. If you have any questions about EPA's comments, please contact Virginia Laszewski at 312-886-7501 or email her at laszewski.virginia@epa.gov. Please send me a copy of the Section 2 ROD when it is available.

Sincerely,

Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

Enclosure

cc: U.S. Army Corps of Engineers – Louisville District, Attention: CELRL-OP-F, P.O. Box 59, Louisville, KY 40401-0059 (Greg McKay/Deb Snyder)
U.S. Fish and Wildlife Service, Region 3, Bloomington Ecological Services Office, 620 S. Walker Street, Bloomington, IN 47403-2121 (Scott Pruitt/ Robin McWilliams Munson)
Indiana Department of Environmental Management, Office of Water Quality, Section 401Water Quality Certification Program, 100 N. Senate Avenue, MC 65-40, Indianapolis, IN 46204-2251 (Jason Randolph, South Area Project Manager)
Indiana Department of Natural Resources, 402 W. Washington St., Rm W264, Indianapolis, IN 46204 (Matt Buffington)

EPA Region 5 Detailed Comments on I-69 Evansville to Indianapolis, Tier 2 Final Environmental Impact Statement for Section 2: Oakland City to Washington, Indiana. CEQ No. 20100058

AIR QUALITY

The FEIS has responded appropriately to our DEIS comments concerning updating information regarding the lead (Pb) standard, providing a discussion of the new tighter 24-hour PM standard and PM 2.5 Hot Spot Analysis. However, there are misstatements in the FEIS regarding EPA's September 24, 2009, Federal Register (74 FR 48690) notice that should be corrected. Below we identify and discuss the various misstatements found in the FEIS and provide the appropriate wording or changes that should be used to correct each misstatement.

EPA Federal Register (74 FR 48690) Notice - Annual PM2.5

The FEIS refers to an EPA September 24, 2009, Federal Register (74 FR 48690) notice proposing to find that the Evansville area and Lake and Porter Counties (Chicago area) now have monitoring data for annual PM2.5 that is now demonstrating attainment of the annual PM2.5 National Ambient Air Quality Standard (NAAQS). Please be advised that this EPA Federal Register (74 CFR 48690) notice is not a redesignation proposal, does not propose to act on a maintenance plan, and is limited to the monitoring data. Although the Indiana Department of Environmental Management (IDEM) has submitted a redesignation request and maintenance plan for the Evansville area, EPA has not yet published any action on the redesignation and maintenance plan for annual PM2.5. Consequently, the entire Evansville area, which includes Montgomery Township and Washington Township in the Section 2 project area, remains nonattainment for annual PM2.5.

Recommendations: Some of the wording in the FEIS should be corrected (see below examples for appropriate wording) to properly characterize the September 24, 2009, Federal Register notice in the FEIS. These corrections can be accomplished in an FEIS errata sheet. In addition, we recommend the corrected status of the Evansville area for annual PM2.5 be identified in the Record of Decision (ROD).

<u>Page S-64, SUMMARY, S.13.8 Clean Air Act Compliance</u>, the first paragraph states, "On September 24, 2009, USEPA issued a proposed rule that would reclassify these two townships as maintenance areas." This statement is incorrect. The September 24, 2009, proposal proposed to find that the Evansville area and Lake and Porter Counties (Chicago area) had clean (meeting the NAAQS) monitoring data for PM2.5. This sentence should be changed to read: "On September 24, 2009, USEPA issued a proposed rule to find that the monitoring data in the Evansville area is attaining the NAAQS for annual PM2.5."

<u>Page 4-117, 4.6 Air Quality</u>, first full paragraph, third sentence: "After this SIP update is approved by USEPA, these areas of Gibson and Pike counties will be designated as "maintenance" areas for the annual fine particulate matter standard, according to the USEPA proposed rule on September 24, 2009 (74 FR 48690)." EPA believes that in this

paragraph, FHWA/INDOT are talking about the submitted redesignation and maintenance plan. Consequently, we recommend the sentence be rewritten as follows: "After this SIP update is approved by USEPA, these areas of Gibson and Pike Counties will be designated as "maintenance" areas for the annual fine particulate matter standard. USEPA has not yet acted on this submittal."

Page 5-183, 5.9 Air Quality, Section 5.9.1 Introduction, states, "On September 24, 2009, USEPA issued a proposed rule reclassifying these two townships as "maintenance" areas for the annual fine particulate standard." Again, the proposal at 74 CFR 48690 did not approve a maintenance plan and thus the townships are not "maintenance" areas. The proposal is a clean data finding and not a redesignation. The sentence should read: "On September 24, 2009, USEPA issued a proposed rule finding clean monitoring data for the entire Evansville area including these two townships."

Page 5-191, 5.9.3 Methodology, PM2.5, last sentence states, "Thus, the conformity analysis for PM2.5 focuses on the regional-level analysis . . . that were proposed for reclassification as maintenance areas by USEPA on September 24, 2009." EPA did not propose to reclassify the two townships as stated here. Delete the following: "that were proposed for reclassification as maintenance areas by USEPA on September 24, 2009" from the sentence.

Page 5-192, 5.9.4 Air Quality Status, first full sentence on the page states, "On September 24, 2009, USEPA issued a proposed rule reclassifying these two townships as "maintenance" areas for the annual fine particulate standard." Again, the proposal at 74 CFR 48690 did not propose to approve a maintenance plan and thus the townships are not "maintenance" areas. The proposal is a clean data finding and not a redesignation. The sentence should read: "On September 24, 2009, USEPA issued a proposed rule finding clean monitoring data for the entire Evansville area including these two townships."

Page 5-192, Section 5.9.5 Air Quality Modeling, take out the parentheses statement: "(proposed as maintenance areas as of September 24, 2009)." Do the same on page 5-195 (PM2.5 Analysis) and page 5-200 (5.9.7 Conformity Findings).

Page 5-201, Section 5.9.9 Summary, the second sentence about the September 24, 2009, proposal, should be changed to read: "On September 24, 2009, USEPA issued a proposed rule that would find these two townships (Montgomery Township and Washington Township) have monitored attainment of the PM2.5 standard."

Page 5-202, Section 5.9.9 Summary, the second sentence regarding FHWA conformity demonstration for Montgomery Township (Gibson County) and Washington Township (Pike County) should be corrected by replacing "maintenance area" with "nonattainment area" to read: ". . . completed review of the conformity demonstration for Montgomery Township (Gibson County) and Washington Township (Pike County, Indiana's annual fine particulate matter nonattainment area for the I-69 Tier 2 Section 2 FEIS."

AQUATIC RESOURCES

Jurisdictional Determinations

The FEIS provides the clarifications EPA requested regarding aquatic resources in our DEIS comment letter. However, there is another misstatement on page 5-383 about the final determination of jurisdiction, which is the responsibility of EPA.

Recommendation: We recommend that the FEIS be amended to disclose that the Corps of Engineers needs to get concurrence from EPA on jurisdictional determinations under Section 404 of the Clean Water Act. This may be remedied in an FEIS errata sheet.

Aquatic Resources Impacts

Since the DEIS, progress has been made to future reduce aquatic resources impacts. For example, the FEIS Refined Preferred Alternative incorporates the folded-diamond interchange design that we recommended for the South Daviess SR 57 Interchange. With the additional site-specific field work and wetland delineation, the aquatic impacts for the proposed highway route have decreased slightly for wetlands, ponds and streams. This is desirable.

Mitigation

Since the DEIS, the mitigation banking instrument has been completed, with EPA as a signatory. According to the credit release schedule of the mitigation banking instrument, only a portion of the projected wetlands and stream mitigation credits are anticipated to have been released at the time of the Corps' Clean Water Act Section 404 permitting for Section 2. EPA accepts compensatory mitigation for projects at a ratio of 1:1 for released mitigation banking credits. In permittee-responsible mitigation or in this case where a single-user, project-specific mitigation bank is involved, we generally accept a ratio of 1.5:1 of mitigation provided to mitigation credits required for the project, with the extra mitigation reflecting the temporal loss of wetlands and streams and the uncertainty of concluding the future compensatory mitigation project to the degree of quality anticipated.

During our review of the final mitigation plans, we are willing to consider this approach to providing compensatory mitigation, and discuss it with the Interagency Review Team (IRT) for the bank. This may be a way of making fuller use of the proposed mitigation sites and requiring fewer additional mitigation projects.

Request: EPA requests that FHWA/INDOT send a copy of the final mitigation plan for wetlands and streams as soon as it is available, since the final resolution of these issues will be resolved as part of the CWA Section 404 permitting. Please send the final mitigation plan to:

Cathy Garra
Wetlands and Watersheds Branch (WW-16J)
U.S. EPA Region 5
77 W. Jackson Blvd
Chicago, Illinois 60604.