UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. M. Lee Bishop
EIS Document Manager
Office of Logistics Management
Office of Civilian Radioactive Waste Management
Department of Energy
1551 Hillshire Dr., M/S 011
Las Vegas , NV 89134

Dear Mr. Bishop:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and the National Environmental Policy Act, the Environmental Protection Agency (EPA) has reviewed the Department of Energy's (DOE) Draft Supplemental Environmental Impact Statement (SEIS) on the Nevada Rail Corridor for the proposed Yucca Mountain Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste (CEQ #20070428) and Draft Environmental Impact Statement (EIS) for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to the proposed Yucca Mountain Repository (CEQ #20070559).

Comments on the Nevada Rail Corridor Draft SEIS

The Nevada Rail Corridor draft SEIS supplements and expands the Nevada rail corridor analysis of the potential impacts of constructing and operating a railroad to connect the Yucca Mountain repository to an existing rail line near Wabuska, Nevada (the Mina corridor). The 2002 Yucca Mountain Final EIS evaluated five potential rail corridors within Nevada, including the Caliente, the Carlin, the Caliente-Chalk Mountain, the Jean, and the Valley Modified rail corridors. In its Record of Decision, DOE selected the Caliente rail corridor. The 2002 final EIS also considered the Mina rail corridor but eliminated it because a rail line within this corridor would need to cross the Walker River Paiute Reservation, and the Tribe objected to the transportation of nuclear waste across its Reservation. However, this corridor became feasible in 2006 when the Tribal Council informed DOE that it would allow the consideration of this action. Because the Mina rail corridor was not addressed in detail in the final EIS, DOE decided that it would be appropriate to supplement it by providing an analysis commensurate with that performed for the other rail corridors to determine if it warrants further detailed evaluation at the alignment level. In addition, DOE decided that it was appropriate to update the analyses of the Carlin, Jean and Valley Modified rail corridors. The Caliente-Chalk Mountain rail corridor,

which would cross part of the Nevada Test and Training Range, was eliminated from further consideration because of the U.S. Air Force concerns that a rail would interfere with military activities.

To determine whether the Mina rail corridor warranted further detailed evaluation, the draft SEIS evaluated the potential environmental impact of 12 environmental resource areas, which included: land use and ownership, air quality, hydrology, biological resources and soils, cultural resources, socioeconomics, and environmental justice. It also provided an update of environmental information for the Carlin, Jean, and Valley Modified rail corridors for the same environmental resource areas. The draft SEIS concluded that environmental conditions and associated potential environmental impacts associated with the Carlin, Jean, and Valley Modified rail corridors remain unchanged from those reported in the Yucca Mountain final EIS; therefore, DOE will not be evaluating these corridors at the alignment level. The draft SEIS concluded that the Mina rail corridor warrants further study at the alignment level. However, in 2007, the Walker River Paiute Tribal Council withdrew from participation in the draft SEIS. Accordingly, the draft SEIS identified the Mina rail corridor as the "nonpreferred" alternative; the document continues to identify the Caliente rail corridor as the preferred alternative. EPA supports the DOE's conclusion to evaluate potential alignments in the Caliente and Mina rail corridors.

Comments on the Rail Alignment Draft EIS

The Rail Alignment draft EIS analyzes the potential impacts of railroad construction and operation along common segments and alternative segments within the Caliente and Mina rail corridors for the purposes of determining an alignment for the construction and operation of a railroad for shipments of spent fuel, high-level radioactive waste, and other materials from an existing rail line in Nevada to a geologic repository at Yucca Mountain. It also analyzes the potential impacts of constructing and operating support facilities. The proposed action implementing the Caliente Alternative is the preferred alternative.

EPA is concerned that the preferred alignment, i.e., the Caliente rail alignment, may require the filling of up to 81 acres of waters of the U.S., including wetlands associated with the Meadow Valley Wash and Clover Creek (Table 4-58). These wetlands represent one of the few remaining riparian areas in southern Nevada that supports mature native vegetation. The direct loss of these resources would eliminate habitat for wildlife, including the endangered southwestern willow flycatcher, and could contribute to altered flow regimes and changes to erosion and sedimentation rates in the remaining aquatic resources in the watershed. Despite these potentially significant impacts to waters of the U.S., the draft EIS does not provide an analysis of how these proposed discharges of fill material would meet the requirements of the Clean Water Act Section 404(b)(1) Guidelines ("Guidelines"). We are particularly concerned that the draft EIS does not provide information to demonstrate that the preferred alignment represents the "least environmentally damaging practicable alternative" under the Guidelines and does not provide specific information regarding potential mitigation measures to compensate for any unavoidable impacts.

We note that the majority of impacts to waters of the U.S. are associated with construction of support facilities, rather than the rail line itself. For example, construction of the Indian Cove staging area along the Caliente alternative segment would result in filling of 47 acres of wetlands in Meadow Valley Wash. Construction of the Eccles alternative segment interchange yard would result in the filling of 8.2 acres of Clover Creek. An additional 22 acres of wetlands in Meadow Valley would be filled if quarry CA-8B is built. According to the draft EIS, there may be alternative locations for these facilities that would be less damaging to aquatic resources.

We are also concerned about the limited analysis regarding the hydrologic effects of the rail line construction to the Meadow Valley Wash area. Given that the proposed Eccles alignment is at the mouth of two unnamed tributaries that contribute to high flows in Clover Creek, we would expect that the rail line construction may constrict the stream channels and potentially lead to higher flow events, causing erosion and sedimentation impacts. We also note that the Eccles alternative segment, both where it crosses Clover Creek and at the proposed interchange site, would impact a riparian restoration site that is currently subject to monitoring and maintenance as part of an EPA enforcement action.

Finally, we are concerned that the presentation of information regarding impacts to wetlands and other waters of the United States makes it difficult to compare alternatives and discern the extent of impacts. For example, the summary of impacts to waters of the United States (presented in Table 4-56 for the Caliente Rail Alignment and Table 4-202 for the Mina Rail Alignment) does not include impacts to jurisdictional wetlands, and appears to be inconsistent with information presented in Tables 2-31, 4-58 and 4-204.

In light of the concerns stated above, we recommend that additional information and analysis regarding compliance with the Guidelines be included in the final EIS, and that the information specifically discuss the steps taken to avoid, minimize and mitigate impacts to wetlands and other waters of the United States. Specifically, we recommend that the final EIS include the following information and analyses:

- detailed information (e.g., maps, tables) regarding the extent of wetlands and other waters that may be impacted by the proposed alignments, including a Clean Water Act jurisdictional determination by the US Army Corps of Engineers;

- a description of the nature of the potential impacts (i.e., permanent or temporary; direct, indirect or cumulative);

- a differentiation between impacts that would occur from construction of the rail line, staging yards, interchange yards, and quarries;

- a functional assessment of the impacted wetland resources, using a hydrogeomorphic methodology or other US Army Corps of Engineers' approved methodology;

- an analysis of the practicability of avoiding wetland impacts by not using the Indian Cove staging yard and potential quarry site CA-8B (which would fill 47 and 22 acres of wetlands, respectively) and instead using the Upland staging yard and other quarry sites which would potentially have less impacts to aquatic resources;

- an analysis of the practicability of further alternatives for connecting the Caliente rail alignment to the Union Pacific Railroad Mainline that avoid impacts to Meadow Valley Wash and Clover Creek;

- an analysis of the practicability of avoiding wetland impacts on the Eccles rail alignment, which has 8.2 acres of fill associated with the interchange yard;

- an analysis of the practicability of using a variation to the Mina rail alignment (which would, as currently proposed, impact only 0.005 – 0.007 acres of wetlands (Table 2-31, p. 2-123)), recognizing that the Walker River Paiute Tribe have expressed their objections to transporting nuclear or radioactive waste through their Reservation; and

- a detailed compensatory mitigation plan for unavoidable impacts, including an identification of how the compensatory mitigation sites would be managed and financial assurances to ensure that the compensatory mitigation projects will be implemented successfully and protected over the long-term.

Conclusion

As noted above, EPA supports the conclusion of the Nevada Rail Corridor draft SEIS. Therefore, in accordance with our policies and procedures for the review of EISs pursuant to section 309 of the CAA, we have rated this document as Lack of Objections (LO). In light of the environmental concerns we identified with respect to the Rail Alignment draft EIS, we have rated it as Environmental Concerns/Insufficient Information (EC-2). See enclosed "Summary of EPA Rating System".

We appreciate the opportunity to review this draft document. We look forward to reviewing the final SEIS and EIS associated with this project. The staff contact for the review is Marthea Rountree and she can be reached at (202) 564-7141.

Sincerely,

Anne Norton Miller
Director
Office of Federal Activities

Enclosure